


Ekl, Williams  
& Provenzale LLC  
Attorneys and Counselors at Law

KAROLINA OBRYCKA V. CITY OF CHICAGO, ET AL.  


**Exhibit HH**  
(David Naleway Deposition Transcript)

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KAROLINA OBRYCKA, MARTIN )  
KOLODZIEJ, and EVA CEPIASZUK, )  
Plaintiffs, )  
vs. ) No. 07 C 2372  
CITY OF CHICAGO, a Municipal ) Judge  
Corporation, ANTHONY ABBATE, ) Amy J. St. Eve  
JR., GARY ORTIZ, PATTI )  
CHIRIBOGA, and JOHN DOE, )  
Defendants. )

The deposition of DAVID NALEWAY, called by the Plaintiffs for examination, pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions for the purpose of discovery, taken before Maribeth Reilly, a Notary Public in the State of Illinois and a Certified Shorthand Reporter of the State of Illinois, at 219 South Dearborn Street, Chicago, Illinois, on January 16, 2009, commencing at 10:30 a.m.

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PRESENT:

MR. PATRICK J. PROVENZALE

(Ekl Williams, PLLC

901 Warrenville Road, Suite 175

Lisle, Illinois 60532)

Appeared on behalf of the Plaintiffs;

MS. ANNE McINNIS

(City of Chicago, Special Litigation Counsel

30 North LaSalle Street, Room 1720

Chicago, Illinois 60602)

Appeared on behalf of Defendant City

of Chicago;

MR. MICHAEL J. MALATESTA

(Apicella &amp; Malatesta

134 North LaSalle Street, Suite 320

Chicago, Illinois 60602)

Appeared on behalf of Defendant

Anthony Abbate.

REPORTED BY: MARIBETH REILLY, C.S.R.

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WITNESS	EXAMINATION BY	PAGE
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## EXHIBITS

NALEWAY DEPOSITION	MARKED
EXHIBIT NUMBER	FOR ID

(No deposition exhibits were marked.)

\*\*\*\*\*

(Witness duly sworn.)

MR. PROVENZALE: Lieutenant, will you please state your full name, and spell your last name for the record.

THE WITNESS: Lieutenant David Naleway, that's N as in Nancy, a-l-e-w-a-y.

MR. PROVENZALE: Let the record reflect that this is the deposition of

Lieutenant David Naleway, taken pursuant to agreement of the parties as to the time and location, and a Court order as to the location, and that the Federal Rules of Civil Procedure and the Local Rules of the Northern District, Eastern Division apply.

DAVID NALEWAY,

called as a witness herein on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY

MR. PROVENZALE:

Q. Lieutenant, how are you employed today?

A. Chicago Police Department.

Q. How long have you been employed by the Chicago Police Department?

A. Since 1992.

Q. Prior to your employment with the Chicago Police Department, what was your immediate employment?

A. I worked for a company Flying Tigers, who was eventually bought out Federal Express.

Q. How old are you today?

A. 55.

Q. So when you started in the Chicago Police Department, you were --

A. 38.

Q. -- approximately --

A. 37.

Q. -- 37, 38?

How long had you worked for Flying Tigers or whatever its predecessor company?

A. Combination of 19 years.

Q. What did you do for them?

A. Ramp service, cargo.

Q. The entire 19 years?

A. Yes.

Q. Prior to your employment at, you

2 (Pages 2 to 5)

MARIE WALSH FITZGERALD, C.S.R. - (630) 241-4511

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<p>1 know, whatever the predecessor or the successor 2 company, did you -- what was your highest level 3 of education prior to being employed there? 4 A. High school. Well, one year of 5 college. 6 Q. Where was the one year of college at? 7 A. Wilbur Wright Junior College. 8 Q. Did you obtain any degrees? 9 A. No. 10 Q. Where did you graduate from high 11 school? 12 A. Lane Technical 13 Q. During your employment, the 19 years 14 that you were employed, did you obtain any 15 additional education? 16 A. No. 17 Q. Or formal education? 18 A. With the police department, I have, 19 yes. 20 Q. I am talking about just during the 21 employment that you had prior? 22 A. No. 23 Q. So prior to 1992, your highest level 24 of education was your high school diploma,</p>	<p>1 somebody who was a City employee who recommended 2 you? 3 A. It was a testing procedure. 4 Q. Okay. I am talking about any 5 individuals who that you are aware of made any 6 type of recommendation on your behalf for hiring 7 and employment? 8 A. I don't understand your question. 9 It's a civil service test. 10 Q. Okay. Aside from the test, are you 11 aware of anybody who offered any type of 12 recommendation for your employment with the 13 Chicago Police Department? 14 A. That doesn't make any sense to me. 15 Your question doesn't make any sense to me. 16 Q. Do I take it your answer is no, or 17 yes? 18 A. I am not understanding your question. 19 Everyone has to take a test. You pass it. You 20 move on to the next step. 21 Q. Whether anybody -- whether or not 22 there is a test requirement, are you aware of 23 whether anybody ever made any type of 24 recommendation on your behalf for your</p>
Page 7	Page 9
<p>1 correct? 2 A. And one year of college. 3 Q. Do you have any military background? 4 A. No. 5 Q. And your employment with the Flying 6 Tigers or FedEx, whatever entity it was, did you 7 ever work in any type of security or 8 investigatory responsibility? 9 A. No. 10 Q. Why did you go or apply to the 11 Chicago Police Department? 12 A. Got tired of working out at the 13 airport in the cold. 14 Q. Change of job? 15 A. Yes. 16 Q. Did anyone assist you in getting 17 employment with the Chicago Police Department? 18 MS. McINNIS: Object to vague. 19 You can answer. 20 THE WITNESS: I don't understand your 21 question. 22 BY MR. PROVENZALE: 23 Q. I mean, did you know somebody who was 24 a Chicago police officer who recommended you, or</p>	<p>1 employment with the City of Chicago? 2 A. I just don't understand your 3 question. I really don't. You have to take a 4 test to get the job. 5 Q. I understand that. But whether you 6 take a test or not, somebody can still make a 7 recommendation on your behalf. They are -- they 8 are independent, have nothing to do with one 9 another propositions. 10 So I am assuming you took the 11 test and passed, right? 12 A. Yes. 13 Q. Setting that aside, are you aware of 14 whether anybody ever made a recommendation on 15 your behalf to be with the City of Chicago? 16 A. There was a background investigation. 17 Q. Were there any recommendations made 18 on your behalf during the background 19 investigation? 20 MS. McINNIS: Object to speculation. 21 Assumes he's actually seen them. 22 THE WITNESS: I don't know. 23 BY MR. PROVENZALE: 24 Q. I am not asking whether you have seen</p>

3 (Pages 6 to 9)

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1 it. I am asking whether you are aware if  
2 anybody provided any recommendation on your  
3 behalf for employment with the City of Chicago?

4 A. I just -- I don't understand what you  
5 are asking.

6 Q. Did you have to fill out an  
7 application?

8 A. Yes.

9 Q. Was part of that application listing  
10 people as references?

11 A. Yes.

12 Q. Did any of the people that you listed  
13 as references provide a recommendation on your  
14 behalf for employment with the City of Chicago?

15 MS. McINNIS: Object to vague and  
16 speculation.

17 You can answer.

18 THE WITNESS: I don't know.

19 BY MR. PROVENZALE:

20 Q. Were any of the people that you  
21 provided as references employees of the City of  
22 Chicago at the time or former employees of the  
23 City of Chicago?

24 A. I don't recall who I had listed as

1 Q. As a patrolman?

2 A. Yes.

3 Q. What shift?

4 A. Midnights.

5 Q. And for what period of time was that  
6 assignment --

7 A. My --

8 Q. -- at that rank?

9 A. My field training, three months.

10 Q. And was that all during the year of  
11 1992?

12 A. Beginning of 1993.

13 Q. Do you know what the date of your  
14 employment was?

15 A. 29, June, 92.

16 Q. Once you completed your field  
17 assignment, what was your next?

18 A. 15th District.

19 Q. So some time after the three months  
20 of your initial field assignment, you were  
21 transferred to the 15th District?

22 A. Yes.

23 Q. As a patrolman?

24 A. Yes.

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1 references.

2 Q. You attended the Chicago Police  
3 Academy?

4 A. Yes, I did.

5 Q. You completed the course work and  
6 obtained certification?

7 A. Yes.

8 Q. And what was your first assignment  
9 while you were still in the police academy?

10 A. In the police academy?

11 Q. Well, I mean, obviously when you  
12 completed the police academy, and then part of  
13 the police academy is actually being an  
14 assignment pending your approval after the  
15 probationary period, correct?

16 A. Yes.

17 MS. McINNIS: Object to the form of  
18 the question.

19 Go ahead.

20 THE WITNESS: You have a field  
21 assignment.

22 BY MR. PROVENZALE:

23 Q. What was your first field assignment?

24 A. 14th District.

1 Q. What shift were you on at that point?

2 A. Afternoons, third watch.

3 Q. Approximately the 3:00 to 11:00  
4 shift; is that right?

5 A. Yes.

6 Q. How long a period of time were you  
7 assigned to the 15th District as a patrolman?

8 A. About a year and a half  
9 approximately.

10 Q. So from some time in the middle of  
11 1993 through the end of '94?

12 A. Middle of '94, probably somewhere  
13 around there, in that area.

14 Q. Sometime in '94?

15 A. Sometime in '94.

16 Q. What was your next assignment after  
17 that?

18 A. 17th District.

19 Q. At what rank?

20 A. Patrolman.

21 Q. What shift?

22 A. I was a gang tactical officer.

23 Q. You had a unit assignment?

24 A. It was a tactical assignment.

4 (Pages 10 to 13)

MARIE WALSH FITZGERALD, C.S.R. - (630) 241-4511

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1 Q. It was a district tactical  
2 assignment?  
3 A. District tact.  
4 Q. Prior to your assignment to that  
5 tactical unit, did you have any gang crime  
6 certifications like NEMRT?  
7 A. No.  
8 Q. Or through the ISP or anything like  
9 that?  
10 A. No.  
11 Q. Did you obtain any law enforcement  
12 training certifications regarding gang crime law  
13 enforcement during the time that you were in the  
14 gang tactical unit in the 17th District?  
15 A. No.  
16 Q. The answer is no?  
17 A. No.  
18 MS. McINNIS: Just wait for him to  
19 finish his question.  
20 MR. PROVENZALE: Sometimes -- I know  
21 you know where I am going, but sometimes my  
22 questions are, unfortunately, long.  
23 BY MR. PROVENZALE:  
24 Q. How long a period of time were you in

Page 15

1 the gang tactical unit in the 17th District?  
2 A. Until beginning of 1996.  
3 Q. So some time -- from the period  
4 sometime in '94 to the beginning of '96, you  
5 were in the gang unit, correct --  
6 A. Yes.  
7 Q. -- at the 17th District?  
8 What was your next assignment then  
9 at the beginning of '96?  
10 A. I was promoted to the rank of  
11 sergeant.  
12 Q. When did you take the test?  
13 A. Oh, I don't remember when I took the  
14 test.  
15 Q. Was it the first time you took the  
16 test that you were promoted?  
17 A. Yes.  
18 Q. Do you remember what your rank was on  
19 the list?  
20 A. I believe it was number 300 or low  
21 300s.  
22 Q. Were you aware at the time whether  
23 there were any other higher ranked first time  
24 testees for the rank of sergeant than yourself?

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1 In other words, do you know of any  
2 other applicants who were first-time candidates  
3 for the rank of sergeant who were ranked higher  
4 than you?  
5 A. I have no idea.  
6 Q. How long were you -- what district  
7 were you assigned in as sergeant?  
8 A. 16th District.  
9 Q. So sometime from the beginning of the  
10 year of 1996 through what period of time were  
11 you sergeant in the 16th District?  
12 A. The beginning of 2003.  
13 Q. So for approximately seven years,  
14 somewhere in that timeframe?  
15 A. It was about six and a half years.  
16 Q. During the period of time, those six  
17 and a half years, were you street sergeant or  
18 were you a desk sergeant or what capacity?  
19 A. Street sergeant.  
20 Q. The entire time?  
21 A. There were days here and there that I  
22 would work the desk.  
23 Q. But your general assignment was  
24 street?

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1 A. 98 percent of the time it was on  
2 street, yes.  
3 Q. What shift were you in when you first  
4 started?  
5 A. Midnights.  
6 Q. Did you stay in that throughout the  
7 whole time?  
8 A. I did have a burglary routine also  
9 assigned to the 16th District, but it was all  
10 midnights.  
11 Q. What was your next assignment  
12 following your rank of holding rank of sergeant  
13 in the 16th District?  
14 A. Promoted to the rank of lieutenant.  
15 Q. That was when?  
16 A. The beginning of 2003.  
17 Q. Do you remember when you took the  
18 test for that?  
19 A. No.  
20 Q. Was it the first time that you took  
21 the test that you received a promotion?  
22 A. Second.  
23 Q. Do you remember when the first time  
24 was that you had taken the test?

5 (Pages 14 to 17)



Page 18

1 A. No.  
 2 Q. What was your first assignment in the  
 3 rank of lieutenant?  
 4 A. 15th District.  
 5 Q. And what shift?  
 6 A. Midnights.  
 7 Q. How long a period of time did you  
 8 maintain the midnight shift lieutenant rank?  
 9 A. Being low in seniority, I was bounced  
 10 around from shift to shift.  
 11 Q. Was it generally in what capacity?  
 12 Watch commander?  
 13 A. Watch commander.  
 14 Q. For whatever shift you were working,  
 15 that was your rank or your position for that  
 16 shift?  
 17 A. Basically, yes.  
 18 Q. How long a period of time were you  
 19 lieutenant in the 15th District?  
 20 A. One year.  
 21 Q. So from some time in '03 to some time  
 22 in '04 or was it --  
 23 A. '04, February of 04.  
 24 Q. And then what happened in February of

Page 19

1 '04?  
 2 A. I was reassigned to Internal Affairs  
 3 Division.  
 4 Q. What position did you hold upon your  
 5 appointment or assignment to IAD?  
 6 A. Commanding officer of general  
 7 investigations section.  
 8 Q. Who were your immediate supervisors  
 9 at the time of your appointment in IAD?  
 10 A. Assistant deputy superintendent Karen  
 11 Rowan.  
 12 Q. Anyone parallel in rank to her as  
 13 your supervisor, or was she the next immediate  
 14 person?  
 15 A. Next immediate.  
 16 Q. And then there is no one else on her  
 17 level of rank?  
 18 MS. McINNIS: Object to form.  
 19 BY MR. PROVENZALE:  
 20 Q. In IAD?  
 21 MS. McINNIS: Object to the form of  
 22 the question.  
 23 BY MR. PROVENZALE:  
 24 Q. In other words, she was your

Page 20

1 immediate supervisor?  
 2 A. Yes.  
 3 Q. But there wasn't anyone else of equal  
 4 rank who was also an immediate supervisor of  
 5 yours?  
 6 A. Equal rank to her?  
 7 Q. Yes.  
 8 A. No.  
 9 Q. Who else then in the chain of command  
 10 was up from you?  
 11 A. Superintendent.  
 12 Q. So that would have been Phil Cline at  
 13 the time?  
 14 A. Yes.  
 15 Q. At the time of your appointment in  
 16 '04, there were 3 sections of IAD; general  
 17 investigations, special investigation and  
 18 confidential. Is that right?  
 19 A. That's correct.  
 20 Q. Who were the lieutenants in charge of  
 21 special and confidential at the time of your  
 22 appointment?  
 23 A. Lieutenant Susan Clark was special  
 24 investigations. And Lieutenant Trancatello, I

Page 21

1 do not know how to spell it, was in charge of  
 2 confidential section.  
 3 Q. At the time of your appointment in  
 4 2004, you had sergeants and detectives who  
 5 reported to you in the general investigation  
 6 section; is that correct?  
 7 A. Sergeants. No detectives.  
 8 Q. There were no detectives. The  
 9 detectives were assigned to one of the other  
 10 investigator sections?  
 11 MS. McINNIS: Object to the form;  
 12 speculation.  
 13 THE WITNESS: At that time, I am not  
 14 sure if there were any detectives assigned to  
 15 the confidential section.  
 16 BY MR. PROVENZALE:  
 17 Q. At some point after your appointment,  
 18 were detectives assigned to the confidential  
 19 investigation section?  
 20 A. Yes.  
 21 Q. At the time of your appointment, was  
 22 Sergeant Stehlik one of your subordinate  
 23 officers?  
 24 A. No. He came later.

6 (Pages 18 to 21)

Page 22

1 Q. How about Sergeant Maraffino?  
 2 A. He came later.  
 3 Q. And Sergeant Martin?  
 4 A. He was there when I arrived.  
 5 Q. The assignment of cases to the  
 6 individual sections of IAD came from whom, as  
 7 your understanding was, when you were first  
 8 assigned in 2004?  
 9 MS. McINNIS: Object to form;  
 10 speculation.  
 11 BY MR. PROVENZALE:  
 12 Q. To your understanding, who made the  
 13 assignment decision of cases within IAD between  
 14 the or among the three investigative divisions?  
 15 MS. McINNIS: Same objection; form  
 16 and speculation.  
 17 THE WITNESS: At the time that I came  
 18 in, those decisions were being made by Karen  
 19 Rowan.  
 20 BY MR. PROVENZALE:  
 21 Q. And was this a collaborative process  
 22 where there would be conferences or meetings  
 23 regarding the referrals from OPS that came in?  
 24 Or would it just be her decision alone, in your

Page 23

1 understanding of it?  
 2 MS. McINNIS: Object to speculation  
 3 and incomplete hypothetical.  
 4 THE WITNESS: I am not sure I am  
 5 understanding what you are asking.  
 6 BY MR. PROVENZALE:  
 7 Q. What I am asking is whether or not at  
 8 the time when you came in in terms of the  
 9 decision-making process to which investigative  
 10 section a case would be assigned, were there any  
 11 kind of like conferences that you participated  
 12 in to give input as to whether or not the case  
 13 should be assigned to your division, or whether  
 14 it should be assigned to special or  
 15 confidential?  
 16 MS. McINNIS: Object to the form.  
 17 THE WITNESS: I don't recall specific  
 18 conversations. I am sure there might have been.  
 19 BY MR. PROVENZALE:  
 20 Q. I am talking about just as a matter  
 21 of the procedure of the assigned cases?  
 22 A. It was not a daily thing, no.  
 23 Q. It wasn't like once a week or once  
 24 a -- with whatever frequency it was that you and

Page 24

1 the other section heads in IAD would meet with  
 2 ADS Clark -- ADS Rowan and discuss where each  
 3 case should be assigned?  
 4 A. No. There were daily assignments.  
 5 Q. But whatever the frequency was,  
 6 whether it was daily, couple of times a day,  
 7 once a week, whatever the frequency was, there  
 8 was no regular meeting where you and the other  
 9 division chiefs and the ADS in charge would  
 10 discuss where to assign a case?  
 11 A. No.  
 12 Q. In the time that you were in IAD from  
 13 February of '04 up to February of '07, do you  
 14 recall being involved in the decision-making  
 15 process for the assignment of any specific case?  
 16 A. Ever, yes.  
 17 Q. How many, as you sit her today, do  
 18 you recall being involved in, the  
 19 decision-making process of which division a case  
 20 would be assigned?  
 21 A. I couldn't even give a guess as to  
 22 that. I have no idea.  
 23 Q. I mean, is it multiples like many  
 24 cases, or was the rare exception that that would

Page 25

1 occur?  
 2 A. In five years, there were many times.  
 3 Q. In terms of how you were involved in  
 4 any of those, did any of those involve the ADS  
 5 calling you and asking you to come to her office  
 6 to discuss where a case should be assigned?  
 7 A. It was not that type of a thing. It  
 8 was usually if she was not available.  
 9 Q. That's what I want to get at. So  
 10 more of a substitute in her absence?  
 11 A. Substitute would be a perfect word.  
 12 Q. Was there a specific division chief  
 13 assigned to act as the -- or act in place of the  
 14 ADS to assign cases?  
 15 MS. McINNIS: Object to form.  
 16 BY MR. PROVENZALE:  
 17 Q. Or was that just like a rotating  
 18 responsibility, if she wasn't there, then one of  
 19 the three of you would handle the  
 20 responsibility?  
 21 A. I acted in her place numerous times.  
 22 Q. To your knowledge, was there a set  
 23 schedule that said, you know, that sort of like  
 24 the floater to take the responsibility of

7 (Pages 22 to 25)



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1 assignment of cases if the ADS wasn't available,  
2 or was it just whoever was just available?

3 MS. McINNIS: Object to form, lacks a  
4 timeframe.

5 BY MR. PROVENZALE:

6 Q. I am talking about through the entire  
7 time from February of '04 to February of '07  
8 again.

9 A. I am not aware of any policy that  
10 what is in effect.

11 Q. Like a schedule or something like  
12 that?

13 A. No, there was never a schedule.

14 Q. On those occasions in which you acted  
15 in the capacity of substitute of the ADS to make  
16 assignment of cases, was there anything of  
17 reference available to you that you were aware  
18 of that you would look at to make the  
19 determination of which unit a case should be  
20 assigned to?

21 MS. McINNIS: Object to form.

22 THE WITNESS: There are specific  
23 cases that go to specific sections.  
24

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Page 29

1 BY MR. PROVENZALE:

2 Q. That's what I am saying. How do you  
3 know? Is that because somebody told you that,  
4 and that's the way you were trained? Or is  
5 there a book that says this kind of case goes  
6 here, this case of case goes here?

7 A. There is no book. It's just what  
8 cases go to each sections.

9 Q. Based upon -- is it just in your  
10 recollection of the circumstances where you  
11 acted as substitute, was it simply your  
12 understanding that this kind of a case goes to  
13 this section?

14 A. Yes.

15 Q. And your recollection, from where did  
16 you obtain that understanding?

17 A. The specific responsibilities of each  
18 section.

19 Q. How did you become aware of the  
20 specific responsibilities of each section?

21 A. Experience, knowledge.

22 Q. It wasn't as if there was a reference  
23 book somewhere that you looked to see, well,  
24 this is this section's responsibility, so that's

1 how -- the kind of case you assign to it?

2 MS. McINNIS: Objection; asked and  
3 answered.

4 THE WITNESS: No. We know what each  
5 section's responsibilities are.

6 BY MR. PROVENZALE:

7 Q. From February of '04 to February of  
8 '07, were you in -- were you the head of the  
9 general investigation section?

10 A. Yes.

11 Q. At some point in time, Sergeant  
12 Stehlik and Sergeant Maraffino had come on to be  
13 your subordinate officers in the general  
14 investigation section; is that correct?

15 A. Yes.

16 Q. Do you recall when they came in with  
17 respect to February of '07?

18 A. I don't recall the dates.

19 Q. Prior to February of 2007, had you  
20 ever been involved -- as the head of general  
21 investigations been involved in coordinating the  
22 investigation of a case that was assigned to  
23 more than one investigative division in IAD?

24 MS. McINNIS: Object to the form of

1 the question.

2 THE WITNESS: I don't recall anything  
3 specific, but we would help each other out all  
4 the time, yes.

5 BY MR. PROVENZALE:

6 Q. Aside from helping each other out --  
7 well, let me ask you this. In cases that prior  
8 to February of 2007, where you helped out  
9 another of the divisions in IAD, is it just an  
10 informal assistance? Or was that something that  
11 was part of the original assignment of the case  
12 where two different sections were assigned to  
13 investigate one case or both?

14 MS. McINNIS: Object to the form.

15 THE WITNESS: A case may be  
16 transferred to another section, but it would  
17 never be assigned to two different  
18 investigators.

19 BY MR. PROVENZALE:

20 Q. So let me get that out of the way.  
21 In your recollection prior to February of 2007,  
22 you had never recalled a -- you don't recall a  
23 circumstance where a case was assigned  
24 simultaneously to two different investigative

8 (Pages 26 to 29)

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1 sections; is that correct?

2 A. I don't know what you mean by  
3 assigned. I am not sure what you mean.

4 Q. You used the word assigned in your  
5 last answer, so I am using the word assign in  
6 the same way that you used it.

7 A. Well, I am not understanding your  
8 question here.

9 Q. Let's talk about the assignment  
10 process.

11 A. Okay.

12 Q. When a case is assigned to you, how  
13 is it assigned?

14 A. It comes from the front, front  
15 office.

16 Q. ADS whomever, whether it be ADS Rowan  
17 at the time, or ADS Kirby later, would transmit  
18 the case to general investigations for  
19 investigation; is that correct?

20 A. Correct.

21 Q. As part of that transmittal was there  
22 like a face sheet to the assignment?

23 A. Yes.

24 Q. And every case that was assigned

1 investigators were parts of different  
2 investigative divisions of IAD?

3 A. Two names on one?

4 Q. Right.

5 A. Not that I'm aware of.

6 Q. You had mentioned that sometimes you  
7 would help each other out?

8 A. Yes.

9 Q. And meaning that one investigative  
10 division would assist another investigative  
11 division in an investigation, correct?

12 A. Yes. We would support each other.

13 Q. Can you give me examples of what  
14 types of support would be -- in your experience  
15 was provided by either your division or another  
16 division to yours in the course of investigating  
17 cases prior to February of '07?

18 A. If we needed surveillance, I would  
19 contact the confidential section.

20 Q. What else?

21 A. If one of the other sections needed a  
22 police officer's powers removed, I normally  
23 would take care of that.

24 Q. Notice of suspension, for example?

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Page 33

1 would have that face sheet, correct?

2 A. Correct.

3 Q. That would be the OPS face sheet, or  
4 was it a face sheet or IAD? In other words, I  
5 want to make a distinction between the face  
6 sheet for the CR file versus a face sheet for an  
7 assignment within IAD?

8 A. That's all the same face sheet.

9 Q. So when you -- when a case is  
10 assigned within IAD to a particular division,  
11 there is a designation on the face sheet as to  
12 which division it's assigned, correct?

13 A. There is a designation as to who the  
14 assigned investigator is.

15 Q. When there is a designation as to who  
16 the assigned investigator is, that is as a fact  
17 a designation to a particular investigative  
18 division because investigators are assigned to  
19 specific divisions, right?

20 A. Correct.

21 Q. In your experience prior to February  
22 of 2007, were you ever aware of a circumstance  
23 where more than one investigator was assigned to  
24 investigate a case inside IAD where those

1 A. Notice of suspension to actually  
2 remove police powers.

3 Q. The actual form that you hand them  
4 and say that you have been stripped of your  
5 powers?

6 A. Yes. We would process that, yes.

7 Q. What about manpower issues, just if  
8 somebody needed additional investigators to  
9 assist on a case, and anything like that to your  
10 recollection ever occur prior to February of  
11 2007?

12 A. Not that I am -- I can't give any  
13 specifics.

14 Q. In your recollection, the help that  
15 you have referred to that one investigative  
16 section would provide to another investigative  
17 section related to the specific responsibilities  
18 or investigative techniques that each section  
19 would normally carry out?

20 A. Can you ask me that again.

21 Q. For example, if you needed  
22 surveillance, you would go to the investigative  
23 section that conducted surveillance as part of  
24 its investigations confidential section?

9 (Pages 30 to 33)

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1 A. Yes.

2 Q. Likewise, if another -- if the  
3 confidential section or the special  
4 investigation section needed assistance with  
5 serving a notice of suspension or processing a  
6 request to strip an officer of his police  
7 powers, that would be a general investigation  
8 section responsibility, and that would be the  
9 type of request that would be asked of your  
10 division. Correct?

11 A. It's not that it was -- those  
12 responsibilities weren't delegated to specific  
13 sections, but that's what we did.

14 Q. You would normally carry those out so  
15 that's why you would be requested to help with  
16 that type of thing?

17 A. Yes.

18 Q. Because that's what you were more  
19 familiar with doing?

20 A. Yes.

21 Q. And that's kind of all I am getting  
22 at. It's not so much that it was a strict  
23 delineation of responsibilities for each  
24 investigative section. It was more you are more

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1 familiar with doing that type of thing, can you  
2 assist us in doing that; is that correct?

3 A. Yes. I up until a year ago, I did  
4 coordinate what we call the call-out team. And  
5 so, yes, I had more experience with that.

6 Q. What is the call-out team?

7 A. If there is a major incident off  
8 hours that needs, required our assistance or  
9 guidance, I had a group of sergeants that  
10 rotated, and they would be sent out to the  
11 field.

12 Q. Sort of like a rapid response?

13 A. Yes.

14 Q. In connection with those occasions  
15 prior to February of '07 in which assistance was  
16 provided either by your section to another  
17 section or by another section to your section of  
18 IAD, in your experience would coordination of  
19 efforts occur?

20 MS. McINNIS: Object to the form of  
21 the question, vague.

22 THE WITNESS: Coordination?

23 BY MR. PROVENZALE:

24 Q. Right. In other words, well, answer

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1 it the way -- if you need me to expound, I will  
2 try to.

3 A. Well, I would never just go out and  
4 do something without being requested.

5 Q. And when you say requested, by whom  
6 are you referring? By another investigative  
7 section head; by one of the other lieutenants?

8 A. Could have been -- it could have  
9 been --

10 MS. McINNIS: Object to the form of  
11 the question, incomplete hypothetical.

12 BY MR. PROVENZALE:

13 Q. Go ahead.

14 A. It could have been the deputy, or it  
15 could have been one of the other lieutenants.

16 Q. When assistance was requested, to  
17 your recollection, prior to February of '07,  
18 were there ever any occasions where you would  
19 take any part of the investigation or pursue any  
20 part of an investigation that wasn't  
21 specifically requested, but that you felt was an  
22 appropriate investigative step?

23 MS. McINNIS: Object to form,  
24 incomplete hypothetical.

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1 THE WITNESS: I am not privy to the  
2 allegations, so I would never move forward on  
3 something that I didn't know.

4 BY MR. PROVENZALE:

5 Q. So prior to February of 2007, on  
6 those occasions where you provided help to  
7 another one of the investigative sections, it  
8 would have been -- it was in your recollection  
9 specifically a request to do a particular thing  
10 and not a collaboration in the investigation; is  
11 that right?

12 A. Correct.

13 Q. Do you recall -- well, let me ask  
14 you: Prior to February, say, February 21st of  
15 2007, had you ever heard of the name Anthony  
16 Abbate?

17 A. I don't know what the date was that I  
18 first learned of that, that name so.

19 Q. Whatever the first date was that you  
20 had learned of that name, prior to that date,  
21 had you ever heard of that name? That's a  
22 stupid question.

23 A. You are asking me to assume -- I  
24 don't recall the first date.

10 (Pages 34 to 37)

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1 Q. No, no.

2 MS. McINNIS: He will ask it a  
3 different way.

4 BY MR. PROVENZALE:

5 Q. It came out a different way than I  
6 intended it. Let me ask the question in way  
7 that actually makes sense.

8 Prior to the date that you first  
9 heard the name in connection with the  
10 investigation that you conducted back in 2007,  
11 had you ever heard of the name Anthony Abbate  
12 before?

13 A. Never.

14 Q. When you became aware of the name in  
15 February of 2007, whatever the date was, at that  
16 time did you become aware that there were family  
17 members of this individual who worked for the  
18 Chicago Police Department?

19 A. Are you saying prior?

20 Q. As of the date that you learned of  
21 his name?

22 A. I did not know that there were family  
23 members.

24 Q. So prior to the date that you had

1 Q. Sometime after '03?

2 A. When I first made -- yes, it would  
3 have been '03.

4 Q. At what district was that at?

5 A. I was guest watch commander in  
6 numerous districts. Most of the time, 99  
7 percent of the time, I was the guest in Area 5.  
8 I don't ever recall guesting in Area 4. Area 1,  
9 a couple of times, Area 2 maybe once or twice.

10 Q. Do you remember what districts in  
11 Area 2?

12 A. No, I don't.

13 Q. As you sit here today, to the best of  
14 your recollection, you are not aware of ever  
15 having any type of either social, working or  
16 familial relationship with Anthony Abbate; is  
17 that correct?

18 A. Never.

19 Q. As you sit here today, you are not  
20 aware of having any social, working or familial  
21 relationship with his father Carmen or Carmel or  
22 his brother Terry; is that correct?

23 A. I don't know what either one of them  
24 look like. I can't say for certain. I have

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1 first heard the name Anthony Abbate you had --  
2 strike that.

3 After the date that you had  
4 learned of the name Anthony Abbate, you did not  
5 put two and two together and realize that his  
6 father was a detective in the 4th District?

7 MS. McINNIS: Object to the form of  
8 the question.

9 THE WITNESS: I had never heard the  
10 name Abbate. I had no knowledge.

11 BY MR. PROVENZALE:

12 Q. When you were in any of your district  
13 assignments, and I said the 4th District. I  
14 meant Area 4. In any of your district  
15 assignments, did you ever work within Area 4?

16 A. No.

17 Q. In any of your district assignments,  
18 did you ever work within Area 2?

19 A. No. Oh, I take that back. I might,  
20 I might have. I know I guest -- I was a guest  
21 watch commander on a couple of occasions in Area  
22 2. I think it was Area 2.

23 Q. In what timeframe?

24 A. It was as a lieutenant.

1 never been in the same room with either one of  
2 them, but I do not know those names.

3 Q. And that's -- I mean, the names --  
4 you don't know anyone by the name of Carmel  
5 Abbate or Terry Abbate, correct?

6 A. No, I do not.

7 Q. Or Carmen Abbate?

8 A. No, I do not.

9 Q. I have seen it spelled two different  
10 ways.

11 MR. MALETESTA: It is Carmel.

12 MR. PROVENZALE: I have seen it  
13 spelled two different way.

14 MR. MALETESTA: Carmel with an L.  
15 BY MR. PROVENZALE:

16 Q. Do you remember where you were when  
17 you first heard the name Anthony Abbate?

18 A. I was with Deputy Kirby. I was in  
19 the headquarters building.

20 Q. Prior to that time, had you been  
21 aware that there was either an OPS or an IAD  
22 investigation ongoing related to efforts to  
23 identify a Chicago police officer who was  
24 involved at a -- in a fight at a bar?

11 (Pages 38 to 41)



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1 MS. McINNIS: Objection to the form  
2 of the question; assumes facts not in evidence.

3 THE WITNESS: Prior to what time?

4 BY MR. PROVENZALE:

5 Q. Prior to the time you heard the name  
6 Anthony Abbate?

7 A. No. That was the first time.

8 Q. When you heard his name, did you hear  
9 his name in connection with allegations that he  
10 was involved in a fight at a bar? Or tell me,  
11 why don't you tell me what were the  
12 circumstances under which you heard his name?

13 A. That there was an investigation  
14 ongoing about a fight in a bar, yes.

15 Q. Where were you at headquarters?  
16 Were you in ADS Kirby's office or somewhere  
17 else?

18 A. The first time -- I can't be positive  
19 as to the first time that the name was brought  
20 up. I really don't remember.

21 Q. Do you remember who it was that  
22 relayed the information to you?

23 A. It would have been Deputy Kirby.

24 Q. Do you recall whether anyone else was

1 from OPS.

2 Q. Could have been in the room? Could  
3 have been on the way?

4 A. Could have been in the lobby. I  
5 don't remember.

6 Q. Do you remember having any  
7 conversation with Mike Duffy or ADS Kirby,  
8 having any conversation with Mike Duffy when you  
9 came in contact with him?

10 A. I don't recall having any  
11 conversation with Mike Duffy. Whether or not  
12 Deputy Kirby did, I don't recall.

13 Q. Was anyone with Mike Duffy when you  
14 came into contact with him?

15 A. No.

16 Q. And what else do you recall on the  
17 way to the room, if anything?

18 A. Nothing else.

19 Q. Not coming into contact with any  
20 other persons?

21 A. I don't recall anyone else, no.

22 Q. When you got to the computer  
23 forensics lab, can you tell me what happened?

24 A. One of the people from the forensics

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1 present at the time?

2 A. The first time that the name was  
3 brought up, no, I don't recall anyone else being  
4 present.

5 Q. What do you recall ADS Kirby relating  
6 to you regarding whatever it was that Anthony  
7 Abbate was involved in or the investigation of  
8 it?

9 A. The first I was made aware of  
10 anything, she had asked me to come with her down  
11 into the computer forensics lab to view a video.

12 Q. And I take it, you don't recall what  
13 day this occurred, correct?

14 A. No, I don't.

15 Q. Did you accompany her down to the  
16 computer forensics lab, or did you go down by  
17 yourself, or what happened?

18 A. No. I rode down the elevator with  
19 her.

20 Q. Was anybody else accompanying the two  
21 of you on the way down there?

22 A. At some point in time, I don't know  
23 if he was in the elevator with us or not, but at  
24 some point in time, we came across Mike Duffy

1 lab -- my understanding is that there was a  
2 problem viewing a video. Mike Duffy was  
3 carrying around an all-in-one computer, a hard  
4 drive attached to the monitor, and he was  
5 seeking assistance to view that video.

6 Q. And what were the, whoever the tech  
7 was at the computer forensics lab assisting him  
8 trying to retrieve whatever it was of, a video  
9 on the all-in-one computer you referred to?

10 A. That was my understanding, yes.

11 Q. Was that your understanding because  
12 that was a discussion amongst people there, or  
13 was that your understanding because you put it  
14 together by what they were doing?

15 A. We were in the computer forensics  
16 division. That was my understanding

17 Q. Let me ask you: Do you remember who  
18 it was that you learned from the fact that there  
19 was difficulty retrieving information from that  
20 all-in-one computer?

21 A. Mike Duffy.

22 Q. During the time that efforts were  
23 made to retrieve information from that computer,  
24 was there any discussion between or among

12 (Pages 42 to 45)

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1 anybody in the room?

2 A. No. Actually it went pretty quickly.

3 Q. At the time that you were in this  
4 room, do you remember being aware of the name  
5 Anthony Abbate, in other words, you had learned  
6 it from ADS Kirby prior and on the way down, or  
7 was that something that you learned during that  
8 meeting?

9 A. I was not aware of the name at that  
10 point.

11 Q. Did other people arrive other than  
12 those people who were in the room when you first  
13 got there?

14 A. There was Deputy Kirby, there was  
15 myself, there was Mike Duffy, there was the, I  
16 believe it was the computer tech was Sergeant  
17 Hudspeth. I do not know how to spell his name.

18 I don't recall anyone else there  
19 at that particular moment.

20 Q. At some point, did Sergeant Hudspeth,  
21 was he successful in retrieving information from  
22 the computer?

23 A. Yes. He -- almost immediately he was  
24 able to get it up.

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1 Q. And were you able to view any of the  
2 video at that time?

3 A. Yes.

4 Q. The first time that you saw anything  
5 by way of video footage, had anyone else arrived  
6 in the room?

7 MS. McINNIS: Object to the form of  
8 the question. Other than the people that he's  
9 already said were there?

10 MR. PROVENZALE: Right, anyone else.  
11 BY MR. PROVENZALE:

12 Q. He said he was there, Kirby,  
13 Hudspeth, Mike Duffy. Did anyone else come in  
14 prior to the time that you first saw footage?

15 A. I don't recall anyone else being  
16 there. The door was to my back. It's a very  
17 small room. I don't recall anybody else there  
18 at that particular moment.

19 Q. What do you recall viewing? What was  
20 the first thing you -- in terms of the totality  
21 what you first viewed? What did you see?

22 A. What I would know to be a bar, bar  
23 scene, people at a bar, sitting at a -- in a  
24 tavern.

1 Q. Anything occurring on the video in  
2 terms of any criminal conduct?

3 A. Not at first.

4 Q. How long of a video do you recall  
5 watching before something happened?

6 A. We watched a couple of minutes  
7 before things started happening.

8 Q. And when you say things started  
9 happening, there was some physical confrontation  
10 between a male patron in the bar and the  
11 bartender, is that correct?

12 A. Actually there was -- prior to that,  
13 there was what appeared to be a confrontation  
14 between two males.

15 Q. All right. Two of the patrons in the  
16 bar, correct?

17 A. They appeared to be patrons, yes.

18 Q. While you were watching this, could  
19 you hear was there audio with the video?

20 A. I don't recall audio.

21 Q. After you -- and did you watch it all  
22 the way straight through the first time that you  
23 had seen it? Or did anybody stop it along the  
24 way, freeze frame it, slow it down, or anything

1 like that?

2 A. I don't recall anybody stopping it.  
3 I believe it just ran normal speed.

4 Q. Do you recall how the video ended, in  
5 other words, at what point it terminated, what  
6 was going on in the footage, the first time? I  
7 am talking about the first time you saw it?

8 A. How it ended?

9 Q. Yes. At some point I am sure it  
10 stopped playing. What was going on when it  
11 stopped playing?

12 A. People were moving out of the camera.

13 Q. Had the confrontation between the  
14 bartender and the male patron or person who  
15 appeared to be the male patron just completed by  
16 the time that the tape stopped, or did it run on  
17 for minutes after that point?

18 A. I don't know if it continued to run.  
19 I -- the person that was involved in the  
20 confrontation moved out of camera range, and I  
21 don't recall seeing anything else after that.

22 Q. I want to kind of get a handle of  
23 when you -- the first time you watched it. I  
24 mean, did you watch it to make sure that nothing

13 (Pages 46 to 49)



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1 else came in the picture or to see anything that  
 2 happened for, you know, 5, 10, 15, 20 minutes  
 3 after the confrontation occurred between the  
 4 bartender and this male patron? Or was it more  
 5 or less right after the confrontation appeared  
 6 to be over, whoever was playing it, stopped it?

7 MS. McINNIS: Object to the form of  
 8 the question.

9 THE WITNESS: It wouldn't have been  
 10 20 minutes after that we -- we watched it.

11 BY MR. PROVENZALE:

12 Q. Let me ask you: The first time that  
 13 you watched it, do you recall seeing any Chicago  
 14 police officers in the footage?

15 A. No.

16 Q. Uniformed Chicago police officers?

17 A. No.

18 Q. To the best of your recollection,  
 19 during that first viewing of the footage, the  
 20 people who were present in the room were  
 21 yourself, Deb Kirby, Sergeant Hudspeth and Mike  
 22 Duffy. Is that fair to say?

23 MS. McINNIS: Object; asked and  
 24 answered.

1 Q. Do you recall anybody else arriving  
 2 at any time while you were in that room?

3 A. No.

4 Q. So the entire list of attendees in  
 5 this room and viewing of the video was yourself,  
 6 Deb Kirby, Sergeant Hudspeth, Mike Duffy and  
 7 Sergeant Stehlik; is that correct?

8 A. Possibly Sergeant Stehlik.

9 Q. Possibly, okay.

10 During the course of the time  
 11 that -- well, strike that.

12 Did you view it more than once  
 13 while you were in that room?

14 A. Yes.

15 Q. How many times do you recall  
 16 reviewing any portion of the video, whether it  
 17 be, you know, just the middle of it or from  
 18 beginning to end or whatever?

19 A. At least three times.

20 Q. Do you remember any -- did you make  
 21 any comments during any of the playing of the  
 22 video regarding what you were observing on the  
 23 video?

24 A. Just how we were all appalled as to

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1 BY MR. PROVENZALE:

2 Q. I am talking for the duration of the  
 3 time you watched?

4 A. The duration of the time? Sergeant  
 5 Stehlik may have arrived at some point in time.

6 Q. At some point in time, he was in the  
 7 room and may have been during while the video  
 8 was playing or shortly after, something like  
 9 that?

10 MS. McINNIS: Objection;  
 11 mischaracterizes his testimony.

12 THE WITNESS: I can't answer that  
 13 with certainty.

14 BY MR. PROVENZALE:

15 Q. I just want to confirm, at some point  
 16 in time Sergeant Stehlik was there, correct?

17 A. I believe so.

18 MS. McINNIS: Object to the form of  
 19 the question.

20 BY MR. PROVENZALE:

21 Q. You just don't recall at what point  
 22 he arrived during the course of time that you  
 23 were there?

24 A. I believe he arrived.

1 what we were watching.

2 Q. And again, I want to kind of break it  
 3 down as much as possible. You said we were all  
 4 you appalled. I am referring specifically to  
 5 anything you recall you saying specifically?

6 A. I don't recall specifics of what I  
 7 said.

8 Q. Is it fair to say that the general  
 9 substance of your comments was that you were  
 10 appalled, you specifically, was that you were  
 11 appalled by what was depicted in that video?

12 A. Yes.

13 Q. Do you recall anything specifically  
 14 that ADS Kirby had said during any of the  
 15 viewings of the video while you were all in that  
 16 room?

17 A. No.

18 Q. Did she -- setting aside that you  
 19 don't recall what she specifically said, do you  
 20 recall her making any general statements  
 21 consistent with what your expression was about  
 22 how you perceived the footage?

23 A. I couldn't recall anything specific  
 24 that she said.

14 (Pages 50 to 53)

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1 Q. Again, we are setting specifics  
2 aside. Do you generally recall that her  
3 comments -- well, let me ask you. Do you recall  
4 her making any comments at all during the  
5 viewing of the video?

6 A. She spoke, yes.

7 Q. Do you recall -- generally, do you  
8 recall that her comments were consistent with  
9 what you had expressed about the video?

10 A. Yes.

11 MS. McINNIS: Object to form.

12 BY MR. PROVENZALE:

13 Q. Do you recall Mike Duffy making any  
14 comments during the course of any of the  
15 playings of the video?

16 A. I don't recall Mike Duffy speaking.

17 Q. Do you recall Sergeant Hudspeth  
18 saying anything during any of the playings of  
19 the video?

20 A. No.

21 Q. Do you recall Sergeant Stehlik saying  
22 anything during the time that any of the videos  
23 were played?

24 A. Again, I don't -- I can't

1 A. I am not sure of his first name.

2 Q. He was the Assistant State's Attorney  
3 in charge of the public integrity unit at the  
4 State's Attorney's Office?

5 A. Yes.

6 Q. To your understanding?

7 A. Yes.

8 Q. Whoever it was, that was the position  
9 of that person?

10 A. Yes.

11 Q. Could you hear anything that Tom  
12 Duffy was saying or whoever -- I'm sorry. Could  
13 you hear anything that Mr. Bilyk was saying on  
14 the other end?

15 A. No. It was not on speakerphone.

16 Q. What did you hear ADS Kirby saying?

17 A. She was trying to explain the  
18 situation.

19 Q. When you say -- what was she saying  
20 in substance? Even if you can't remember  
21 specifically, generally what was she describing?

22 A. She was --

23 (Phone interruption)

24 MS. McINNIS: I'm sorry, after this

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1 specifically state he was there at that  
2 particular time. So, no, I wouldn't recall him  
3 saying anything.

4 Q. After you had watched the video  
5 several times, whatever it was two, three times,  
6 whatever, was there my conversation as to what  
7 was going to be done and how this matter was  
8 going to be handled by IAD?

9 A. At that particular time?

10 Q. Or OPS?

11 Yes.

12 A. No.

13 Q. Tell me what happened once the  
14 viewings were done, what happened?

15 A. The viewings were done. I went back  
16 upstairs to the 5th floor. Deputy Kirby  
17 summoned me into her office.

18 Q. And what happened there?

19 A. She called up the Assistant State's  
20 Attorney's Office.

21 Q. And who did she connect with?

22 A. It was not on speakerphone. I  
23 believe she was talking to Bilyk.

24 Q. Tom Bilyk?

1 question, can we take a break so you can check  
2 it.

3 THE WITNESS: It's all right.

4 MS. McINNIS: You don't need to check  
5 it?

6 THE WITNESS: No, I'm fine.

7 She was relating about the  
8 video we had just watched.

9 BY MR. PROVENZALE:

10 Q. What was she relating about it?

11 A. What she had just viewed.

12 Q. Do you recall how -- what was it that  
13 she said about it?

14 A. I couldn't recall specifics.

15 Q. What about just generally the  
16 substance of what she was relating?

17 A. Just that there was a physical  
18 confrontation that she had just viewed on a  
19 video.

20 Q. Did she express -- did she make any  
21 comment about what her feelings were about what  
22 she had seen and what she was relating about the  
23 video? -

24 A. I don't recall specifics.

15 (Pages 54 to 57)

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1 Q. How about generally, did she express  
2 any type of opinion or feeling to whomever it  
3 was on the other end of the phone about what the  
4 video depicted?

5 A. I don't recall her expressing  
6 feelings.

7 Q. How about opinions?

8 A. No, I don't recall that.

9 Q. Was anybody else in the room at the  
10 time that this telephone conversation was going  
11 on between Deb Kirby and whom you believe to be  
12 Tom Bilyk or Mr. Bilyk?

13 A. Sergeant Stehlik came in to her  
14 office at some point. I don't know for certain  
15 that she was still in conversation on the phone  
16 when he came in.

17 Q. Do you know where Sergeant Stehlik  
18 had gone between the time that you left the  
19 room -- the computer lab room and the time that  
20 you went up into Deb Kirby's office?

21 MS. McINNIS: Object to form and  
22 speculation.

23 THE WITNESS: I don't know. I am  
24 assuming he went back to his office.

1 or may not have been supported by what was  
2 depicted in that video footage?

3 A. Prior to her conversation?

4 Q. Yes.

5 A. No.

6 Q. Again, we are talking about the  
7 conversation that she had with whoever she  
8 talked to at the State's Attorney's Office whom  
9 you believe to be Mr. Bilyk, right?

10 A. Correct.

11 Q. You don't remember any conversation  
12 with her about that, correct?

13 A. No.

14 Q. Do you know whether she had any  
15 conversation with Sergeant Stehlik prior to the  
16 time she placed the phone call to the State's  
17 Attorney's Office during which time you were  
18 present?

19 MS. McINNIS: Object to form and  
20 speculation.

21 THE WITNESS: Not that I'm aware.

22 BY MR. PROVENZALE:

23 Q. Are you aware of whether she had any  
24 conversation of what criminal charges may or may

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1 BY MR. PROVENZALE:

2 Q. Do you know how -- let me ask this:  
3 Do you know whether he was summoned to come into  
4 Deb Kirby's office or whether he just wandered  
5 in?

6 MS. McINNIS: Object to the form of  
7 the question.

8 THE WITNESS: I don't recall.

9 BY MR. PROVENZALE:

10 Q. You never called him in; is that  
11 correct?

12 A. I don't believe I did, no.

13 Q. Are you aware of whether Deb Kirby  
14 called him in?

15 A. Not that I'm aware of.

16 Q. As of the time that Deb Kirby had  
17 phoned the State's Attorney Office, at that time  
18 were you aware of the name Anthony Abbate?

19 A. I don't recall at what point I became  
20 aware of his name.

21 Q. Prior to the time that Deb Kirby had  
22 called the State's Attorney's Office, had you  
23 had any conversation with her regarding what  
24 charges may or may not -- criminal charges may

1 not have been supported by what was depicted on  
2 that video footage outside of your presence  
3 prior to the time she called the State's  
4 Attorney's Office?

5 MS. McINNIS: Object to form and  
6 speculation.

7 THE WITNESS: I wouldn't know what  
8 was done outside of my presence.

9 BY MR. PROVENZALE:

10 Q. Well, if she came back, she called  
11 you into her office, and she said -- she made  
12 some comment about how she had had a  
13 conversation with somebody. Then without you  
14 having been present during the conversation, you  
15 would know about it. Did anything like that  
16 occur?

17 A. No.

18 Q. As of the time that ADS Kirby had  
19 called the State's Attorney Office, were you  
20 aware through any source of whether ADS Kirby  
21 had made up her mind about what the appropriate  
22 charges were or were not as supported by the  
23 evidence depicted on that video footage?

24 MS. McINNIS: Object to speculation

16 (Pages 58 to 61)

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1 as to what is in Deb Kirby's mind.

2 THE WITNESS: No. She was calling  
3 the State's Attorney's Office for guidance.

4 BY MR. PROVENZALE:

5 Q. Do you recall ever having any  
6 conversation between or among yourself, Sergeant  
7 Stehlik and Deb Kirby -- Do you need to take  
8 that?

9 A. No.

10 Q. Do you recall having any conversation  
11 between or among yourself, Deb Kirby and  
12 Sergeant Stehlik regarding what the appropriate  
13 charges were or were not based upon what was  
14 depicted in that video footage prior to the time  
15 that Deb Kirby called the State's Attorney's  
16 Office that day?

17 A. I don't recall that.

18 Q. Do you recall having formed an  
19 opinion in your mind of what the appropriate  
20 charges were or were not as of the time that Deb  
21 Kirby had called the State's Attorney's Office  
22 that day?

23 A. No.

24 Q. Prior to the time that Deb Kirby

1 A. I don't know what was going on  
2 through Deb Kirby's mind at that time.

3 Q. I am not asking what's going on in  
4 her mind. I am asking from what she was saying,  
5 did it become apparent to you during their  
6 conversation -- during her conversation with  
7 whoever was on the other line that they were  
8 discussing what were or were not appropriate  
9 charges that would be supported by the evidence  
10 that was depicted on the footage?

11 A. She was talking about seeking the  
12 highest possible charge possible.

13 Q. Did you hear her express either an  
14 opinion or a statement of fact about what was  
15 the highest in her mind, what was the highest  
16 charge possible for what was depicted on that  
17 video?

18 A. I don't recall that.

19 MS. McINNIS: Do you want to take a  
20 break?

21 THE WITNESS: No. It's just the  
22 office.

23 MS. McINNIS: Let's take a couple of  
24 minutes.

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1 called the State's Attorney's Office, do you  
2 ever recall having a conversation with Sergeant  
3 Stehlik between or among yourself, Sergeant  
4 Stehlik and Deb Kirby regarding your, or one of  
5 their beliefs, based upon their experience with  
6 the State's Attorneys that the State's Attorney  
7 would charge it one particular way or another,  
8 based upon what was on the video?

9 A. Prior to the phone call?

10 Q. Yes.

11 A. No, I don't recall any conversation.

12 Q. Do you recall during the conversation  
13 between ADS Kirby and Mr. Bilyk, or whom you  
14 believe to be Mr. Bilyk, that the name Anthony  
15 Abbate came up during their conversation, at  
16 least at the end of it that you could hear?

17 A. No.

18 Q. Do you recall from what you could  
19 hear on her end of the conversation becoming  
20 aware that there was some discussion going on  
21 between the two of them about what the  
22 appropriate charges should or should not be  
23 based upon what was depicted in that video  
24 footage that you had seen?

1 (WHEREUPON, short break was had.)

2 BY MR. PROVENZALE:

3 Q. During the course of the conversation  
4 that Deb Kirby was having with the person whom  
5 you believe to be Mr. Bilyk, do you recall  
6 learning from her end of the conversation that  
7 any decision had been made as to what the  
8 appropriate charge was for what was depicted on  
9 that videotape?

10 A. She told me later that the State's  
11 Attorney was not authorizing anything in  
12 relation to a felony.

13 Q. And I am not talking about what you  
14 might have learned later. I am talking during  
15 the course of the conversation, do you remember  
16 hearing her end of it and putting together that  
17 they had made a decision or a decision was made  
18 as to what the appropriate charge should have  
19 been?

20 A. I couldn't hear what the other party  
21 was saying. So she would have had to have  
22 related that to me.

23 Q. I am only asking from the end of what  
24 you could hear from her, you never learned

17 (Pages 62 to 65)



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1 anything like that just from hearing her end of  
2 the conversation?

3 A. No, nothing that I could surmise.

4 Q. That's what I was getting at.

5 Thereafter then she informed you that the  
6 State's Attorney had not authorized, is that the  
7 phrase you used?

8 A. They were not authorizing, I don't  
9 know if that's the exact word that she used,  
10 anything in relation to a felony charge.

11 Q. Let me ask you as best you can recall  
12 specifically, what phrase did she use in terms  
13 of expressing the State's Attorney's, whatever  
14 it was, either denial or rejection or whatever  
15 of felony charges?

16 A. I don't recall specifics.

17 Q. Do you recall whether or not,  
18 regardless of what the specifics were, did she  
19 relate anything to you to the effect of the  
20 State's Attorney is not -- in other words,  
21 withholding judgment at this time until further  
22 investigation could be done? Or was it your  
23 understanding based upon what Deb Kirby had told  
24 you that they had just not authorized it at all?

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1 A. It was my understanding that the  
2 State's Attorney's Office was not interested in  
3 any type of felony charge.

4 Q. At what point did she tell you that  
5 that this was the conversation she had with  
6 Mr. Bilyk? Was it like right after the  
7 conversation, or when was it?

8 A. It was shortly thereafter the  
9 conversation.

10 Q. Same day?

11 A. Oh, yes.

12 Q. Were you and her still in the office  
13 together?

14 A. I believe we were still in the  
15 office, yes.

16 Q. Do you recall whether Sergeant  
17 Stehlik was in the office as of that time?

18 A. I don't recall.

19 Q. Other than relating this information  
20 about the State's Attorney not authorizing  
21 felony charges, was there anything else that was  
22 discussed in that conversation after Deb Kirby  
23 terminated the phone call?

24 A. What conversation?

1 Q. The conversation where she related to  
2 you what the State's Attorney had decided  
3 regarding not authorizing felony charges. Was  
4 there anything else discussed in that  
5 conversation that you had with Deb Kirby?

6 A. I don't recall everything that was  
7 said.

8 Q. Was there any discussion regarding  
9 what kind of investigation was going to be done?

10 A. Investigation?

11 Q. Investigation into identifying who  
12 this individual was, whether there was other  
13 witnesses, anything like that?

14 MS. McINNIS: Object to form.

15 THE WITNESS: I believe at that point  
16 we had a name.

17 BY MR. PROVENZALE:

18 Q. Do you remember at what point it was  
19 that you learned the name between the time that  
20 you had come up from the 5th floor, and the time  
21 that you were having -- that Deb Kirby had  
22 terminated the phone call with Mr. Bilyk?

23 A. I don't recall exactly when she told  
24 me the name. I don't know.

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1 Q. Do you know whether or not she had  
2 learned the name during the phone call with  
3 Mr. Bilyk?

4 A. I don't know when she learned the  
5 name.

6 Q. Prior to that time, whenever she had  
7 learned it, prior to that time, she hadn't  
8 related it to you; is that correct?

9 A. Prior to the viewing, during the  
10 viewing, she had not related it to me. Sometime  
11 after that.

12 Q. It could have been that prior to the  
13 time that you had gone into her office, you had  
14 known the name Anthony Abbate as being connected  
15 with this bar beating case?

16 A. It was after I viewed the video.  
17 Some time after that. I don't know when.

18 Q. So after that, but before -- after  
19 you viewed the video, but before Deb Kirby had  
20 told you that the State's Attorney had not  
21 authorized any felony charges; is that correct?

22 A. I can't be specific about that. I  
23 don't remember at what point in time she told me  
24 the name.

18 (Pages 66 to 69)

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1 Q. So the best you can say as you sit  
2 here today, is after you had viewed the video,  
3 but when after that, you don't recall, correct?  
4 A. After I viewed the video, at what  
5 particular point in time, I don't recall.  
6 Q. But as you sit here today, you do  
7 recall that you were aware of the name Anthony  
8 Abbate as of the time that she was discussing  
9 with you the context of the State's Attorneys  
10 not authorizing felony charges; is that correct?  
11 A. In the subsequent conversation, yes.  
12 Q. When you say subsequent conversation,  
13 you mean subsequent to the phone call, right?  
14 A. Yes.  
15 Q. So aside from that fact, now that you  
16 knew who Anthony Abbate was, was there any  
17 discussion that you had with Deb Kirby or  
18 Sergeant Stehlik in Deb Kirby's office regarding  
19 what investigation would be done in connection  
20 with the case?  
21 A. I didn't know who Anthony Abbate was.  
22 Q. You'll have to forgive me because I  
23 thought you just said that you were aware of his  
24 name at that time?

1 regarding assignment of that investigation to  
2 any particular division within IAD?  
3 A. That investigation was already  
4 assigned to OPS.  
5 Q. Because it was an excessive force  
6 allegation, it was an OPS case as far as you  
7 understood?  
8 A. Yes.  
9 Q. Do you know why at that point IAD was  
10 involved?  
11 A. I believe that OPS asked Internal  
12 Affairs for assistance.  
13 Q. Regarding what?  
14 A. OPS cannot do anything criminal.  
15 They have no powers, and we were being asked to  
16 help them with the criminal investigation.  
17 Q. Was that something directly from Mike  
18 Duffy to your understanding, or who did it come  
19 from?  
20 A. I don't know who it came from.  
21 Q. How did you learn that OPS had made a  
22 request for assistance?  
23 A. Deputy Kirby.  
24 Q. When did she tell you that?

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1 A. The name, the name. You are saying  
2 that I knew who he was. I did not know who he  
3 have.  
4 Q. I don't want to be --  
5 A. When I was made aware of his name.  
6 Now you can ask the question.  
7 Q. As of the time that you were aware of  
8 his name --  
9 A. Okay.  
10 Q. -- you were sitting in Deb Kirby's  
11 office after the phone call with Tom Bilyk that  
12 she had, correct?  
13 A. Correct.  
14 Q. Did you and she have a conversation  
15 about what the appropriate investigation was  
16 going to be regarding Anthony Abbate's  
17 involvement in this bar beating?  
18 MS. McINNIS: Object to form as far  
19 as investigation. It's undefined.  
20 THE WITNESS: Not at that particular  
21 time, no.  
22 BY MR. PROVENZALE:  
23 Q. As of that point in time, are you --  
24 aware of whether or not she had made a decision

1 A. Some time that evening.  
2 Q. Did she tell you the scope of that  
3 assistance that was requested?  
4 A. At some point she did meet with me  
5 and tell me what she wanted me to do, yes.  
6 Q. At what point did she do that?  
7 A. It was after the phone conversation  
8 with the State's Attorney's Office.  
9 Q. When after?  
10 A. Shortly thereafter. I couldn't be  
11 specific as to times.  
12 Q. The same day?  
13 A. Same day, yes. Everything happened  
14 the same day.  
15 Q. I mean, this was all very late at  
16 night, right?  
17 A. Yes, it was.  
18 Q. And it was -- you were called into  
19 the office after your shift had ended, correct?  
20 A. I should have been already done with  
21 my dinner at home, yes.  
22 Q. And so what I want to be specific  
23 about is in terms of your going to headquarters,  
24 viewing the video, going up to Deb Kirby's

19 (Pages 70 to 73)

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1 office and then having this conversation after  
2 the phone call with -- after her phone call with  
3 Mr. Bilyk all occurred on this same day that you  
4 were called in, correct?

5 A. Yes.

6 Q. As I understand it, the substance of  
7 the conversation, the post-phone call  
8 conversation that you recall as you sit here  
9 today in its entirety was simply limited to Deb  
10 Kirby advising you that the State's Attorney had  
11 not authorized any felony charges; is that  
12 correct?

13 A. They were not interested in pursuing  
14 any type of felony charges.

15 Q. Were you aware of any -- were there  
16 any other subjects or topics discussed during  
17 that post-phone call conversation that you had  
18 with Deb Kirby in her office?

19 A. I don't recall anything else in her  
20 office.

21 Q. All right. How about for the  
22 remainder of the time that you were at  
23 headquarters for the rest of that night.

24 A. Yes, there were further

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1 that Mike Duffy had requested this assistance or  
2 that OPS had requested the assistance?

3 A. I don't recall at what point she told  
4 me that we were assisting OPS in their  
5 investigation.

6 Q. As of the time that you had this  
7 conversation with Deb Kirby, do you remember  
8 being aware that the assistance was -- that your  
9 involvement was as an assist at the request of  
10 OPS because there were criminal charges  
11 involved, or it was just your assumption that  
12 that was the case?

13 A. More likely than not, an assumption.

14 Q. As you sit here today, you don't  
15 recall that Deb Kirby had filled you in on that  
16 ever, or it was just your assumption always, or  
17 at some point she actually did?

18 A. She told me that we were going to  
19 assist OPS. I know from knowledge that OPS  
20 cannot do criminal investigations.

21 Q. Let me just put it to you this way:  
22 To the best of your recollection, at what point  
23 did Deb Kirby tell you that, aside from that  
24 being your assumption because that's your

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1 conversations.

2 Q. What's the next conversation that you  
3 recall occurring after that initial post-phone  
4 call conversation where she related to you that  
5 the State's Attorney was not authorizing felony  
6 charges?

7 A. She asked me to put together people  
8 to dispatch to -- one location was to go and  
9 interview the victim in this matter to be  
10 interviewed for criminal charging to determine  
11 probable cause. And the second function that  
12 she directed me to do was to go out and to  
13 attempt to locate Officer Abbate.

14 Q. Was it during this conversation where  
15 she was telling you investigative steps that she  
16 wanted you to take care of or your division, I  
17 take it is what she was talking about, right, to  
18 take care of? Not you personally, but your  
19 investigators, right?

20 A. Right.

21 Q. Was it during this conversation that  
22 she had with you when she was telling you what  
23 investigative steps she wanted to be handled by  
24 you or your division that she related to you

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1 experience?

2 A. It would be after the phone  
3 conversation with the State's Attorney's Office.

4 Q. As you sit here today, you don't  
5 recall whether it was during this -- during or  
6 prior to this conversation you had with Deb  
7 Kirby where she is telling you what  
8 investigative steps she wants the general  
9 investigation section to take; is that correct?

10 A. It would have been prior to that.

11 Q. Okay. That's all I wanted to know.

12 At that time your -- Detective  
13 Dion Boyd, he worked in IAD, correct?

14 A. He was assigned to Internal Affairs,  
15 yes.

16 Q. He was assigned to the confidential  
17 investigation section?

18 A. Yes.

19 Q. And that would have been the section  
20 that was -- that Lieutenant Calloway was in  
21 charge of, correct?

22 A. Yes.

23 Q. Any time prior to the time that Deb  
24 Kirby had told you that she wanted you to have

20 (Pages 74 to 77)

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1 somebody go out and interview the victim, and  
 2 she told you that she wanted you to go and  
 3 locate Anthony Abbate, had you had any  
 4 conversation with either Deb Kirby while  
 5 Lieutenant Calloway was present or with  
 6 Lieutenant Calloway directly regarding the  
 7 Anthony Abbate incident?

8 A. I never saw Lieutenant Calloway that  
 9 evening. I did not talk to Lieutenant Calloway  
 10 that evening.

11 Q. After Deb Kirby had given you these  
 12 assignments of things she wanted to be done, did  
 13 you have any subsequent conversation with  
 14 Lieutenant Calloway the next day or thereafter  
 15 regarding specifically accomplishing these  
 16 requests?

17 A. I don't believe so, no.

18 Q. Did you assign to anyone the  
 19 responsibility to interview the victim?

20 A. Yes.

21 Q. Who did you assign that to?

22 A. That assignment went to Sergeant  
 23 Stehlik and Sergeant -- or Detective Boyd.

24 Q. Was that an assignment that you made

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1 MR. PROVENZALE: Yes.  
 2 THE WITNESS: No. We have helped out  
 3 before.

4 BY MR. PROVENZALE:

5 Q. On a manpower issue, on a shortage of  
 6 manpower issue? I am not talking about --

7 MS. McINNIS: Same objection to form.

8 THE WITNESS: Needed additional  
 9 manpower, yes, we have helped out each other,  
 10 yes.

11 BY MR. PROVENZALE:

12 Q. How many times prior to the February  
 13 of 2007 were you aware that investigative  
 14 sections in IAD loaned their personnel to other  
 15 investigative sections because of manpower  
 16 shortages?

17 MS. McINNIS: Object to form.

18 THE WITNESS: It's not so much a  
 19 manpower shortage. It's needing additional  
 20 bodies.

21 I'm aware of one time where I had to  
 22 loan some of my investigators to confidential  
 23 section for three days for surveillance  
 24 purposes.

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1 for Detective Boyd, or was it -- I mean, how did  
 2 he get involved, given that he is in a different  
 3 investigative section than you?

4 MS. McINNIS: Objection to form and  
 5 speculation.

6 If you know?

7 THE WITNESS: I believe Deputy  
 8 Kirby -- because at the time that this was  
 9 happening, I have a very limited staff on  
 10 afternoons, and we needed some other help, and I  
 11 believe that Deputy Kirby reached out to the  
 12 confidential section for additional people.

13 BY MR. PROVENZALE:

14 Q. Is it fair to say that this is the  
 15 first occasion in your experience of working at  
 16 IAD -- strike that.

17 This is the only occasion up to  
 18 this point in your assignment to IAD where a  
 19 manpower shortage required having to borrow an  
 20 investigator from another section?

21 MS. McINNIS: Object to the form of  
 22 the question.

23 THE WITNESS: Are you saying the only  
 24 time?

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1 BY MR. PROVENZALE:

2 Q. Prior to February of '07?

3 A. Yes.

4 Q. Prior to February of '07 was there  
 5 ever an occasion where you had to borrow bodies  
 6 from other sections to assist some investigation  
 7 that was assigned to your division?

8 A. I have utilized detectives from the  
 9 confidential section, yes.

10 Q. Well, aside from utilizing them as a  
 11 result of a need for bodies, not just because  
 12 you used them to carry out some investigative  
 13 function that they are more accustomed to do,  
 14 but specifically because you didn't have the  
 15 bodies to do it?

16 A. I needed additional people that  
 17 night, yes.

18 Q. And when did that occur prior to  
 19 February of '07?

20 A. No. February of '07?

21 Q. I am talking about prior to February  
 22 of '07?

23 A. I don't recall specific incidents.

24 Q. As of the time that you had requested

21 (Pages 78 to 81)

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1 the assistance of the confidential investigation  
 2 section to loan you a body --  
 3 A. I did not make that request.  
 4 Q. Well, who -- you are saying ADS Kirby  
 5 had made that request?  
 6 A. I believe so, yes.  
 7 Q. Prior to the time that that request  
 8 had been made, are you aware of whether or  
 9 not -- strike that.  
 10 Were you specifically aware of any  
 11 allegation in connection with this Anthony  
 12 Abbate's involvement in the bar beating that  
 13 indicated that Mr. Abbate after the bar beating  
 14 had threatened the bar owner or the bartender  
 15 with false arrest or planting drugs on them?  
 16 A. Was I aware of that?  
 17 Q. Yes.  
 18 A. No, never.  
 19 Q. Any time after you had met with Deb  
 20 Kirby when she had given you the instructions of  
 21 what investigative steps she wanted,  
 22 interviewing the victim and locating Mr. Abbate,  
 23 did you ever learn that there was allegations  
 24 made by anybody who was a witness to this

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1 incident or connected to the bar that Mr. Abbate  
 2 had communicated threats of false arrest or  
 3 planting drugs on them or bar patrons?  
 4 A. I have never heard that, no.  
 5 Q. Prior to the time that Detective Boyd  
 6 and Sergeant Stehlik went out to interview the  
 7 victim, did you have any conversation with  
 8 either one of them about what you wanted done?  
 9 A. General conversation, yes.  
 10 Q. With either one or both of them?  
 11 A. I believe both of them were in the  
 12 office.  
 13 Q. And at that time, what did you tell  
 14 them?  
 15 A. I believe I gave them the information  
 16 on the victim, and they were instructed to  
 17 attempt to locate her, and interview her in  
 18 regards to her criminal complaint.  
 19 Q. At that time when you met with them,  
 20 this would have been the day following that  
 21 night that you were in the headquarters looking  
 22 at the video and everything else you have  
 23 testified about that night. Correct?  
 24 A. It was the same night.

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1 Q. It was the same night when you met  
 2 with Detective Boyd and Sergeant Stehlik?  
 3 A. Yes. We responded immediately.  
 4 Q. At that time, do you recall having  
 5 any of the investigative documentation that had  
 6 been compiled by OPS prior to that night?  
 7 A. I was not in possession of any of  
 8 that, no.  
 9 Q. Prior to the time that you sent  
 10 Detective Boyd and Sergeant -- that you gave  
 11 them the assignment to go and interview the  
 12 victim, had you ever seen any documents from OPS  
 13 relating to statements that the victim had made  
 14 or any other witness had made regarding what had  
 15 occurred in the bar that night?  
 16 A. No. OPS was conducting an  
 17 administrative investigation, and I cannot see  
 18 that.  
 19 Q. Were you aware as of the time that  
 20 you had instructed Sergeant Stehlik and  
 21 Detective Boyd to go interview the victim that  
 22 the victim had already given a sworn statement  
 23 to OPS?  
 24 A. That would have been an

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1 administrative. I was sending out Stehlik and  
 2 Boyd for criminal.  
 3 Q. At the time that you had given them  
 4 the assignment to go and take the victim's  
 5 statement, were you aware that the victim had  
 6 already given a sworn statement to OPS?  
 7 A. No.  
 8 Q. Do you know whether or not Detective  
 9 Boyd or Sergeant Stehlik were aware of anything  
 10 like that?  
 11 MS. McINNIS: Objection; speculation.  
 12 THE WITNESS: Not that I'm aware.  
 13 BY MR. PROVENZALE:  
 14 Q. Were you aware of whether they had  
 15 reviewed anything like that prior to the time  
 16 they went out and interviewed the victim?  
 17 A. Not that I'm aware of.  
 18 Q. Other than directing them to go out  
 19 and interview the victim, was there any other  
 20 direction that you gave them with respect to  
 21 meeting with the victim?  
 22 A. No.  
 23 Q. Was their sole -- in your  
 24 understanding, was their sole responsibility

22 (Pages 82 to 85)

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1 that you would assign them to do was just to go  
 2 out and take a statement from the victim?  
 3 A. In regards to the criminal  
 4 investigation, yes.  
 5 Q. Correct.  
 6 At that time when you had sent  
 7 them out, was it your understanding that they  
 8 were to obtain the victim's -- the victim --  
 9 strike that.  
 10 At the time that you sent them  
 11 out, was it your understanding in your  
 12 assignment to them that they were to obtain the  
 13 signed complaint from the victim against Anthony  
 14 Abbate?  
 15 A. Yes, and seek the highest possible  
 16 charge that we could.  
 17 Q. Which was what?  
 18 A. Which was what?  
 19 Q. Right.  
 20 A. At that time, we didn't know what the  
 21 highest charge would be.  
 22 Q. Well, when you told them to go out  
 23 and take the victim's statement, did you tell  
 24 them to prepare any form complaints for her to

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1 sign?  
 2 A. I don't remember those specific  
 3 instructions.  
 4 Q. Did you tell them that they should  
 5 prepare a complaint for battery, take it out to  
 6 her and have her sign it and bring it back?  
 7 A. I believe that they were told that if  
 8 she would sign a complaint, to have one signed,  
 9 yes.  
 10 Q. Complaint for what?  
 11 A. I -- that was to be determined by  
 12 them.  
 13 Q. By whom?  
 14 A. Detective Boyd and Sergeant Stehlik.  
 15 Q. And what?  
 16 A. They were the preliminary  
 17 investigators in a criminal matter.  
 18 Q. What were they to base their decision  
 19 on what to charge on? On her statement alone?  
 20 A. She was the alleged victim, yes.  
 21 Q. Other than their taking a statement  
 22 of the victim, and Sergeant Stehlik possibly  
 23 having viewed the video, I mean as -- let me ask  
 24 you this.

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1 Let me back up: As of the time  
 2 you had sent them out to go and interview the  
 3 victim, were you aware Sergeant Stehlik had seen  
 4 the video?  
 5 A. At that point, yes, I believe he had  
 6 seen the video.  
 7 Q. And to the best of your  
 8 recollection -- in fact, he had even come into  
 9 the room at some point during the time that Deb  
 10 Kirby was talking with Mr. Bilyk in her office;  
 11 is that correct?  
 12 MS. McINNIS: Objection to form,  
 13 mischaracterizes his prior testimony.  
 14 THE WITNESS: I don't know at what  
 15 point he came in. I do believe he was in the  
 16 office.  
 17 BY MR. PROVENZALE:  
 18 Q. Are you aware of whether or not  
 19 Sergeant Stehlik knew that the State's Attorney  
 20 had told Deb Kirby that they were not  
 21 authorizing felony charges?  
 22 MS. McINNIS: Object to form;  
 23 speculation.  
 24 THE WITNESS: I don't know what

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1 Sergeant Stehlik was aware of that evening in  
 2 regards to that conversation.  
 3 BY MR. PROVENZALE:  
 4 Q. Did you ever tell him that the  
 5 State's Attorney was not authorizing felony  
 6 charges prior to the time or during the time  
 7 that you were giving him the assignment to go  
 8 out and interview the victim?  
 9 A. I don't recall that conversation.  
 10 Q. You don't recall the conversation,  
 11 meaning you don't recall whether you had told  
 12 him that or not?  
 13 A. I don't recall telling him whether or  
 14 not the State's Attorney was even interested in  
 15 reviewing the matter for felony charges.  
 16 Q. When you told him that he should go  
 17 and interview the victim and file the most -- or  
 18 most serious charges -- what was the phrase you  
 19 used?  
 20 A. Highest possible charge.  
 21 Q. Highest possible charges. Did you  
 22 tell him the highest possible charges except any  
 23 felonies?  
 24 A. No.

23 (Pages 86 to 89)



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1 Q. You just told him the highest possible charges, correct?  
 2 possible charges, correct?  
 3 A. Yes.  
 4 Q. Was there any discussion between or  
 5 among yourself, Detective Boyd and Sergeant  
 6 Stehlik, when you gave them this assignment as  
 7 to what you thought the appropriate charge was?  
 8 A. I would not have an opinion as to  
 9 that without interviewing the alleged victim,  
 10 and I was not doing that.  
 11 Q. What information were you expecting  
 12 to obtain from the alleged victim that wasn't  
 13 depicted on the video that was going to assist  
 14 in some way in determining what the appropriate  
 15 charge was?  
 16 A. Extent of injuries.  
 17 Q. As of that time, no one had told you  
 18 what the extent of her injuries were?  
 19 A. No.  
 20 Q. Deb Kirby hadn't told you?  
 21 A. No.  
 22 Q. Mike Duffy hadn't told you?  
 23 MS. McINNIS: Objection; asked and  
 24 answered.

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1 MR. PROVENZALE: You can answer.  
 2 THE WITNESS: No.  
 3 BY MR. PROVENZALE:  
 4 Q. Is it your understanding that in the  
 5 assignment, your understanding of the assignment  
 6 that you had given the two of them, is that they  
 7 were to go out, interview the victim, make their  
 8 own assessment as to what were the highest  
 9 possible charges, have her sign a blank  
 10 complaint form, and then bring it back and then  
 11 fill it in and then process the charges?  
 12 MS. McINNIS: Objection; compound  
 13 form.  
 14 THE WITNESS: A lot of questions  
 15 there.  
 16 BY MR. PROVENZALE:  
 17 Q. Well, you can answer it unless I  
 18 mean --  
 19 A. Can you rephrase the question?  
 20 Q. How would you like me to rephrase it?  
 21 I am trying.  
 22 A. One at a time.  
 23 Q. Was it your understanding that in the  
 24 assignment that you were giving them, they were

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1 to go out, and No. 1, interview the victim?  
 2 A. Correct.  
 3 Q. No. 2, make an assessment based upon  
 4 their law enforcement experience as to what the  
 5 highest possible charges are that are supported  
 6 by her statement that she gives them?  
 7 A. Her statement and the evidence, yes.  
 8 Q. And whatever they may have seen on  
 9 the video, correct?  
 10 A. Yes, and extent of injuries.  
 11 Q. And to assess the extent of injuries,  
 12 whatever the evidence was that she said that in  
 13 their assessment would support whatever the  
 14 highest possible charges were. Correct?  
 15 A. Correct.  
 16 Q. And then to have her sign a blank  
 17 complaint form, correct?  
 18 A. No one was ever instructed to sign a  
 19 blank complaint form.  
 20 Q. Was she to sign a complaint form?  
 21 Was that one of their responsibilities was to  
 22 have her sign a complaint form when they went to  
 23 interview her?  
 24 A. I believe the instructions were to

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1 ascertain whether she was willing to sign a  
 2 complaint.  
 3 Q. And having established her  
 4 willingness, and assuming she was willing to do  
 5 so, to then do what?  
 6 A. I did not give those instructions. I  
 7 did not -- they are experienced police officers.  
 8 They would know what to do.  
 9 Q. But this was all sort of -- in your  
 10 understanding, the assignment was a fluid  
 11 process. They were to take it step-by-step and  
 12 then move on from there, and not take anything  
 13 as presumed in terms of what she was going to  
 14 say, and what she wasn't going to say that might  
 15 support criminal charges, correct?  
 16 MS. McINNIS: Object to the form.  
 17 THE WITNESS: I don't know what you  
 18 mean by presumed. She presumed?  
 19 MR. PROVENZALE: No. They presumed  
 20 when they went out to talk to her.  
 21 THE WITNESS: There was no  
 22 presumption on on their part.  
 23 BY MR. PROVENZALE:  
 24 Q. There shouldn't have been any

24 (Pages 90 to 93)

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Page 96

1 presumption to them on what their appropriate  
2 charges were prior to talking to her, at least  
3 in your understanding of the assignment,  
4 correct?

5 A. Correct.

6 Q. In your mind, it would have been  
7 inappropriate for them to have given her a blank  
8 complaint form to simply sign and then to later  
9 fill it in, correct?

10 A. In my mind?

11 Q. Yes.

12 MS. McINNIS: Object to the form of  
13 the question.

14 Could you read that back.  
15 (WHEREUPON, said record was  
16 read back, as requested.)

17 BY MR. PROVENZALE:

18 Q. In your mind, it would have been  
19 inappropriate for them to have presented the  
20 victim with a blank complaint form for her  
21 signature for them to fill it in with the  
22 charges and the allegations at some later time,  
23 correct?

24 MS. McINNIS: Object to form;

Page 95

1 speculation and incomplete hypothetical.

2 THE WITNESS: I would not present a  
3 blank complaint form without filling it in.

4 BY MR. PROVENZALE:

5 Q. I mean a complaint form itself is a  
6 verification that the allegations are true and  
7 correct by the complainant, correct?

8 A. Yes.

9 Q. So it would be inappropriate under  
10 any circumstances to have ask someone to sign a  
11 blank complaint form only to be filled out at a  
12 later point when that -- when the person signing  
13 isn't present, correct?

14 MS. McINNIS: Objection to  
15 speculation, incomplete hypothetical as to what  
16 others would do.

17 You can go ahead and answer.

18 THE WITNESS: I don't know what they  
19 did.

20 BY MR. PROVENZALE:

21 Q. I am asking you just in terms of  
22 matter of procedure in general. It would be  
23 inappropriate for an officer to have a  
24 complainant sign a blank complaint form without

1 the allegations filled in; only for the officer  
2 to fill in the allegations at a later point  
3 because the person wouldn't be swearing to  
4 anything if it was blank. Correct?

5 A. Yes, correct.

6 Q. You have testified that you did not  
7 know at the time that you had given these two  
8 individuals, Sergeant Stehlik, Detective Boyd  
9 the assignment to go and take the victim  
10 statement that you were not aware that the  
11 victim had given a sworn statement to OPS; is  
12 that correct?

13 A. I was not aware of that.

14 Q. Is that something that you would have  
15 wanted to have been aware of and that you would  
16 want your investigators to be aware of so that  
17 they could prepare to question and take a  
18 statement from the witness --

19 MS. McINNIS: Objection.

20 MR. PROVENZALE: -- or the victim?

21 MS. McINNIS: Object to speculation;  
22 incomplete hypothetical.

23 THE WITNESS: We were conducting a  
24 criminal investigation. OPS was conducting an

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1 administrative investigation. They are two  
2 different things.

3 BY MR. PROVENZALE:

4 Q. So someone who gives a sworn  
5 statement, in your mind, in an OPS investigation  
6 has no impact on a criminal investigation, is  
7 that correct, that IAD conducts?

8 A. That's not what I am saying.

9 Q. Well, as an investigator, wouldn't  
10 you have wanted to have known if a witness whom  
11 or an alleged complainant whom you are going to  
12 interview had already given a sworn statement  
13 about what you were going to ask them questions?

14 A. We could not charge criminally on  
15 what she told OPS in an administrative  
16 investigation. They had to conduct their own  
17 interview.

18 Q. I am not questioning that. What I am  
19 saying is wouldn't you have wanted to know what  
20 she had told OPS before you go out and talk to  
21 her in connection with the criminal?

22 A. That would not have biased my  
23 thoughts.

24 Q. What she said under oath on another

25. (Pages 94 to 97)



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1 occasion would have biased your thoughts on what  
2 questions you were going to ask her in your  
3 criminal investigation?

4 A. It may.

5 Q. So in your mind, a valid  
6 investigation includes not being aware of other  
7 statements that a person has made?

8 A. You asked me if I wanted to know.

9 MS. McINNIS: Mischaracterizes his  
10 testimony, incomplete hypothetical and  
11 argumentative.

12 BY MR. PROVENZALE:

13 Q. You had also mentioned that the other  
14 request that Sergeant -- that ADS Kirby had  
15 given you was to locate Mr. Abbate; is that  
16 correct?

17 A. Correct.

18 Q. Whom did you assign that  
19 responsibility to?

20 A. Sergeant Maraffino and Sergeant  
21 Martin.

22 Q. And both of those officers were in  
23 the general investigation section, correct?

24 A. Yes.

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1 Q. Both of them have investigative  
2 experience, correct?

3 A. Yes.

4 Q. To your knowledge, prior to their and  
5 during their assignment in IAD, they have  
6 interviewed witnesses and victims?

7 A. I would assume so, yes.

8 Q. Can you tell me in terms of your  
9 assignment of these responsibilities why it was  
10 that you picked Sergeant -- Detective Boyd to  
11 conduct the investigative interview portion of  
12 what ADS Kirby had requested you to do, as  
13 opposed to having Sergeant Maraffino or Martin  
14 accompany Sergeant Stehlik to do that?

15 A. Deputy Kirby is the one who assigned  
16 Detective Boyd because of his experience to go  
17 interview the victim.

18 Q. Did you have a conversation with her  
19 that let you know that it was because of his  
20 experience that she made that assignment, or is  
21 that your assumption?

22 A. She told me that he was going to go  
23 interview her.

24 Q. Right. Did she say I am having him

Page 100

1 go to interview her because of his experience?

2 A. He was a detective. I assumed that  
3 is why she picked him.

4 Q. It's your assumption that she  
5 assigned him because of his experience; is that  
6 correct?

7 A. Yes.

8 Q. As of the time that you had assigned  
9 Sergeants Maraffino and Martin to locate  
10 Mr. Abbate, had you done any investigate legwork  
11 to identify how he could be located?

12 A. We looked up, obviously, his  
13 assignment, where he was assigned.

14 Q. When you say "we did," who do you  
15 mean by we?

16 A. It's a general term for the general  
17 investigation section. I don't know who  
18 actually went onto the computer to look it up,  
19 but at some point we had to find out where he  
20 was assigned.

21 Q. IAD has a computer database that has  
22 access to the officers' home phone number, cell  
23 phone number, home address, district of  
24 assignment, shift assignment?

Page 101

1 A. I don't believe we have access to  
2 cell phone numbers. I believe we have to get  
3 that from the district of assignment.

4 Q. But you have the district of  
5 assignment, correct, and access to that  
6 information in the computers at IAD?

7 A. Yes.

8 Q. And you have access to information as  
9 to their home address in the computers at IAD,  
10 correct?

11 A. Yes.

12 Q. And their shift assignment, as well,  
13 correct?

14 A. Shift assignment, furlough  
15 selections, day off group.

16 Q. Did you contact the 20th District, or  
17 did somebody else contact the 20th District  
18 prior to the time that you -- or had anybody  
19 prior to the time you were --

20 A. 20th District was not contacted.

21 Q. Do you know who, if anybody,  
22 contacted the 20th District after you gave the  
23 assignment to Maraffino and Martin?

24 A. By contact, you will have to describe

26 (Pages 98 to 101)

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1 contact.

2 Q. Calling over there or going over  
3 there to inquire where is he at, is he on shift  
4 right now, did he call in sick, where is he?

5 A. Sergeant Martin and Sergeant  
6 Maraffino drove to the 20th District.

7 Q. And at that time, did they -- did you  
8 come to learn later that they did not locate him  
9 because he had called in sick or he had shown up  
10 and left sick?

11 A. Yes, I subsequently learned that,  
12 yes.

13 Q. How did you learn that?

14 A. I believe Sergeant Maraffino was the  
15 one who called me.

16 Q. And did he call you while he was --  
17 At what point did he call you?

18 A. I'm assuming it was shortly after his  
19 arrival in the 20th District.

20 Q. So it was -- did the assignment and  
21 then the phone call that you received back from  
22 Sergeant Maraffino occur on the same day?

23 A. Yes.

24 Q. At that point, did he tell you what

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1 they were going to do to try to locate him since  
2 he wasn't at work?

3 A. I gave them instructions.

4 Q. What did you tell them to do?

5 A. I told them to try his house.

6 Q. Did they call you and let you know  
7 what they had found out?

8 A. Yes.

9 Q. What did they tell you?

10 A. Told me that there was no response at  
11 the door.

12 Q. Then did you give them further  
13 instructions at that point?

14 A. I instructed them to try the father's  
15 house.

16 Q. Do you know whether they found him  
17 there?

18 A. They did not.

19 Q. Did you give them any other  
20 instructions to attempt to locate him?

21 A. Our attempts at that point were  
22 exhausted. We had no other knowledge as to  
23 where he may have been.

24 Q. At no time did you or anyone or

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1 Sergeant Maraffino or Sergeant Martin call the  
2 20th District to ask for Mr. Abbate's cell phone  
3 number; is that correct?

4 A. I don't know that. I don't know.

5 Q. Well, did you?

6 A. I did not, no.

7 Q. Did you instruct either one of them  
8 to do that?

9 A. No.

10 Q. Did you instruct either one of them  
11 to call the 20th District to find out -- to  
12 speak with his regular partner to find out if  
13 that person might know where he is at?

14 A. I believe some time that evening  
15 there was a conversation with his partner of  
16 that evening.

17 Q. Who had that conversation?

18 A. I believe it was Sergeant Maraffino  
19 and Sergeant Martin, but I can't be certain.

20 Q. Was it in person or over the phone,  
21 do you know?

22 A. I don't recall.

23 Q. How was it that you learned that  
24 either one of them had had a conversation with

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1 the person who was to have been Mr. Abbate's  
2 partner that evening?

3 A. Through conversation with either one  
4 of them.

5 Q. Do you remember was it telephonic, or  
6 it was in person when they told you this  
7 information?

8 A. It would have been telephonic.

9 Q. What did they tell you that the  
10 individual, his partner that evening, had told  
11 them about where Mr. Abbate was or might have  
12 been?

13 A. I don't believe that they asked or he  
14 told them that. I believe the gist of the  
15 conversation was as to why he suddenly had left  
16 work that evening, claiming to be ill, I believe  
17 it was.

18 Q. And what did that person provide by  
19 way of information about that?

20 A. He had no clue. My understanding was  
21 that Mr. Abbate had received a phone call and  
22 suddenly asked to be taken into the station.

23 Q. He had received a phone call on his  
24 cell phone while they were out on patrol?

27 (Pages 102 to 105)

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1 A. Yes.

2 Q. What other information did either  
3 Sergeant Maraffino or Sergeant Martin relay to  
4 you about the conversation they had with this  
5 individual other than that?

6 A. I don't recall anything else  
7 specifically.

8 Q. To your knowledge, they did not ask  
9 this individual where he -- where Mr. Abbate may  
10 have been at that time?

11 A. I don't know if they asked that.

12 Q. You don't know -- do you know whether  
13 or not they asked this individual, who is his  
14 partner, whether he had Mr. Abbate's cell phone?

15 A. I don't know if they asked that.

16 Q. Do you know how it was that Sergeant  
17 Maraffino and Sergeant Martin had come into  
18 contact with this partner?

19 A. I believe it was in the station.

20 Q. What I mean -- let me be more clear  
21 about it.

22 Was it at your request that they  
23 follow up with this individual, or did they do  
24 that on their own as a next step of attempts to

1 to include?

2 A. Can you say that again.

3 Q. Yes. In any of the reports that they  
4 submitted to you summarizing their efforts to  
5 locate Mr. Abbate, after this initial request  
6 that you had given them during the conversation  
7 that you were talking about when you assigned  
8 them the responsibility to locate Mr. Abbate,  
9 did you ever give the report back to them and  
10 tell them, hey, you forgot to include  
11 circumstances regarding your conversation with  
12 the partner where he advised you that Abbate had  
13 received a phone call and left suddenly?

14 MS. McINNIS: Object to form; vague.

15 THE WITNESS: I don't believe I ever  
16 gave back reports.

17 BY MR. PROVENZALE:

18 Q. As you sit here today, do you recall  
19 any report that was submitted to you by either  
20 Sergeants Maraffino or Martin detailing the  
21 information that you just testified about that  
22 they told you -- one or the other told you over  
23 the phone that Mr. Abbate had received a phone  
24 call while on patrol and then went back to the

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1 locate Mr. Abbate?

2 A. I believe that it was on their own.

3 Q. Do you recall whether or not either  
4 of those -- either Sergeant Maraffino or  
5 Sergeant Martin ever made paper on this  
6 conversation that they had with the partner?

7 A. I don't recall.

8 Q. Do you recall ever asking them to  
9 create a To/From or just a general report on it?

10 A. I believe that they did general  
11 reports on their attempt to locate.

12 Q. Regarding having spoken with the  
13 partner?

14 A. I don't know if that was contained in  
15 that report.

16 Q. That's what I am asking you is in  
17 terms of their reporting on the results of their  
18 attempt to locate Mr. Abbate, those would have  
19 been submitted to you for approval, correct?

20 A. Yes.

21 Q. Do you recall in connection with  
22 reviewing any of those reports that they  
23 submitted to you for approval that you directed  
24 them to include information that they had failed

1 station and left work?

2 MS. McINNIS: Objection; asked and  
3 answered.

4 THE WITNESS: I don't recall that.  
5 BY MR. PROVENZALE:

6 Q. Did you ever speak directly with  
7 Captain Anderson at the 20th District?

8 A. Yes, I have spoken with Captain  
9 Anderson.

10 Q. In connection with this  
11 investigation?

12 A. Yes.

13 Q. When did you have that conversation  
14 with him?

15 A. It was a couple of days later,  
16 possibly.

17 Q. A couple of days later from what?

18 A. From the first night of when I  
19 dispatched Sergeant Maraffino and Sergeant  
20 Martin to the 20th District.

21 Q. And when you spoke with Captain  
22 Anderson, what did you talk with Captain  
23 Anderson about?

24 A. She -- Oh, by that time, everything

28 (Pages 106 to 109)

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1 had been out, and she was just relating to me  
2 that she couldn't believe that he had run into  
3 the station the way he did and told her that he  
4 was going home, and he literally ran down the  
5 hall.

6 Q. When you say everything was out, what  
7 do you mean by that, everything was out?

8 A. That he was being -- we were  
9 attempting to locate him.

10 Q. Was it your understanding through  
11 your conversation with Captain Anderson that she  
12 was relating to you that Mr. Abbate was aware  
13 that IAD was looking for him?

14 MS. McINNIS: Objection.

15 BY MR. PROVENZALE:

16 Q. Is that what you understood her to  
17 say?

18 MS. McINNIS: Object to the form of  
19 the question; speculation.

20 THE WITNESS: She never said that.

21 BY MR. PROVENZALE:

22 Q. You related some -- you related that  
23 she told you there was some relationship between  
24 everything being out and him running through the

1 connection with what she had observed his  
2 behavior to be a couple of days earlier in  
3 running down the hall and leaving his shift in  
4 the middle of it?

5 A. It had nothing to do --

6 MS. McINNIS: Objection to form and  
7 compound.

8 THE WITNESS: It had nothing to do  
9 with each other.

10 MR. PROVENZALE: That's what I wanted  
11 to clear up.

12 BY MR. PROVENZALE:

13 Q. Did you ever speak with Mr. Abbate's  
14 partner directly, the person who was on shift at  
15 the time when he got the phone call and then  
16 left abruptly?

17 A. No.

18 Q. I think I asked you this, but just to  
19 be clear, you don't know who that individual is;  
20 is that correct?

21 A. No, I don't.

22 Q. Do you know whether or not Sergeants  
23 Maraffino or Martin recorded that information  
24 anywhere?

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Page 113

1 station and leaving ship abruptly; is that  
2 right?

3 A. No, that's not correct.

4 MS. McINNIS: Objection.

5 BY MR. PROVENZALE:

6 Q. Clear it up for me so I understand  
7 it. She was telling you that everything was  
8 out, explain that to me?

9 A. When we talked a couple of days  
10 later.

11 Q. Yes.

12 A. At that time, everyone knew that we  
13 were looking for Mr. Abbate.

14 Q. And then she was just relating that  
15 back to understanding why he was -- in her mind,  
16 why he was running out of the station?

17 MS. McINNIS: Objection to form,  
18 speculation as to what was in her mind.

19 THE WITNESS: I don't know what was  
20 in her mind. I don't believe she said that.

21 BY MR. PROVENZALE:

22 Q. What you understood her to be saying.  
23 What was she relating that fact that it was out --  
24 that IAD was looking for Mr. Abbate in

1 A. I don't know.

2 Q. During the conversation that you had  
3 with Captain Anderson a couple of days later  
4 after you had assigned Sergeants Maraffino and  
5 Martin to go and locate Mr. Abbate, did she ever  
6 relate to you that Mr. Abbate had told her when  
7 he came back into the station on that day that  
8 he wasn't feeling good and he was going home?

9 A. I believe that was the gist of the  
10 conversation.

11 Q. But she also told you that he ran  
12 down the hallway?

13 A. Yes.

14 Q. Did she make any comment to you  
15 during the phone call that she had with you that  
16 she found it odd that he would be running if he  
17 wasn't feeling well? In other words, that  
18 things weren't adding up?

19 A. She did not say anything like that.

20 MS. McINNIS: Let's take a quick  
21 break.

22 (WHEREUPON, short break was had.)

23 BY MR. PROVENZALE:

24 Q. I think the last question I had asked

29 (Pages 110 to 113)



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1 you whether or not in the conversation that you  
2 had with Captain Anderson that she had made any  
3 comment to you that things weren't adding up  
4 between him saying he wasn't feeling well and  
5 running down the hall?

6 A. She never said that, no.

7 Q. Other than the efforts that Sergeants  
8 Maraffino and Martin made on that night that you  
9 had given them the assignment to go out and try  
10 to locate Mr. Abbate, and your follow-up call  
11 with Captain Anderson, between that time and the  
12 day that Mr. Abbate was first arrested, did you  
13 assign anyone else to try to locate Mr. Abbate?

14 MS. McINNIS: Object to the compound  
15 nature of the question.

16 THE WITNESS: There would have been  
17 probably several attempts.

18 BY MR. PROVENZALE:

19 Q. In that intervening timeframe?

20 A. Yes.

21 Q. Let's talk about those.

22 After the night that Sergeant  
23 Maraffino and Sergeant Martin had gone to the  
24 20th District and then talked to Mr. Abbate's

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1 partner at that time, and gone to his house and  
2 his father's house, what was the next efforts  
3 that you are aware that either one of them made  
4 to try to locate Mr. Abbate?

5 A. I could probably answer a little bit  
6 better if I knew exactly what day of the week  
7 that the first night we were out.

8 Q. Well, according to -- well, I will  
9 just ask you to assume according to Sergeant  
10 Maraffino's report, he and Sergeant Martin went  
11 out to the 20th District, spoke with the  
12 captain, followed up to Mr. Abbate's house, and  
13 then went to his father's house. That all  
14 occurred on February 22nd.

15 A. I understand that. I am asking for  
16 the day of the week.

17 Q. Friday.

18 A. A Friday.

19 Q. I believe -- the 19th was a Tuesday.

20 MS. McINNIS: Are you sure it was the  
21 Tuesday and not a Monday?

22 MR. PROVENZALE: I am almost  
23 positive, but I can tell you right now.

24 MR. MALATESTA: What's the date?

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1 MR. PROVENZALE: February 22, '07.  
2 It might have been a Monday.

3 MS. McINNIS: I think it's Monday.

4 MR. MALATESTA: February 22nd, '07  
5 was a Thursday. 19th was a Monday.

6 (WHEREUPON, discussion was had  
7 off the record.)

8 BY MR. PROVENZALE:

9 Q. So it was Thursday was the night that  
10 according to Sergeant Maraffino's report, he and  
11 Sergeant Martin had gone out to the 20th  
12 District, okay.

13 A. Friday we probably would have made  
14 the same attempts to locate him. Saturday and  
15 Sunday our offices are closed.

16 Q. So are you aware of on Friday what  
17 attempts -- you say probably. I want to know in  
18 your knowledge as you sit here today, what  
19 attempts Sergeant Martin or Maraffino made to  
20 locate Mr. Abbate?

21 A. They would have gone to the house  
22 again.

23 Q. Do you know that for a fact that they  
24 would have done that, or you just were assuming

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1 they would have done that?

2 A. I would expect them to do that.

3 Q. Would they have made any To/From  
4 report in connection with that follow-up efforts  
5 to locate Mr. Abbate that would have occurred  
6 the following day?

7 A. If nothing would have changed,  
8 probably not.

9 Q. Nothing would have changed meaning  
10 what?

11 A. In terms of no answer, no response at  
12 the doors.

13 Q. Likewise to his father's house as  
14 well, they would have done that?

15 A. Yes.

16 Q. At some point in time after that  
17 initial assignment that you had given to  
18 Sergeants Maraffino and Martin to locate  
19 Mr. Abbate, did you learn that Mr. Abbate was in  
20 some sort of rehabilitation center?

21 MS. McINNIS: Object to the form of  
22 the question.

23 THE WITNESS: I assumed that.

24

30 (Pages 114 to 117)

MARIE WALSH FITZGERALD, C.S.R. - (630) 241-4511

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1 BY MR. PROVENZALE:

2 Q. At what point did you make that  
3 assumption?

4 A. The thought had gone threw my mind  
5 because we were coming up with no contact with  
6 him whatsoever. I did reach out to our  
7 department's EAP people, and all they would  
8 confirm is that they did have contact with  
9 Mr. Abbate, which led me to believe that he was  
10 in some kind of treatment.

11 Q. Let's back that up because I am not  
12 familiar with EAP. What is that?

13 A. Employee Assistance Program.

14 Q. You contacted them; is that correct?

15 A. Yes.

16 Q. Do you remember when it was that you  
17 contacted them with respect to the initial  
18 assignment that you gave to Sergeants Maraffino  
19 and Martin to locate Mr. Abbate?

20 A. Being that the incident the first  
21 night was Thursday, more than likely, I would  
22 have contacted them on Monday.

23 Q. Prior to that date, were you aware of  
24 whether you had learned at all that Mr. Abbate

1 basis of your suspicion that he was in some sort  
2 of rehabilitation facility?

3 A. Yes. I had nowhere else to look.

4 All I had was his address, his father's address.  
5 I did not know who his associates were. Our  
6 attempts to locate him were negative, and other  
7 options started going through my mind.

8 Q. Through the course of your  
9 investigation of him up to the point where you  
10 made the decision to call EAP, were you -- did  
11 you learn any information that he had a  
12 substance abuse problem?

13 MS. McINNIS: Objection to the form  
14 of the question.

15 THE WITNESS: No. I was not aware.  
16 I did not know the man.

17 BY MR. PROVENZALE:

18 Q. Prior to February, prior to your  
19 involvement in the circumstance in February of  
20 '07, had you ever known police officers who were  
21 under investigation for criminal conduct to have  
22 made themselves unavailable by going into a  
23 rehab facility?

24 A. I know officers have placed

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1 may have been or was actually in a  
2 rehabilitation facility?

3 A. No.

4 Q. Other than your assignment to  
5 Sergeant Stehlik and Detective Boyd to interview  
6 the victim, did you give either one of them any  
7 other assignments in connection with the IAD's  
8 criminal investigation of Mr. Abbate?

9 A. I don't believe so.

10 Q. Do you know of any reason why  
11 Detective Boyd -- strike that.

12 Did you ever direct Detective Boyd  
13 to contact the 20th District to try to locate  
14 Mr. Abbate?

15 A. I never gave those instructions, no.

16 Q. Best you can, describe for me your  
17 suspicion that blossomed into you actually  
18 acting on it to call EAP about Mr. Abbate's  
19 whereabouts?

20 A. It's just what it was. It was a  
21 suspicion on my part.

22 Q. But, I mean, like in terms of it  
23 developing, just that no one could find him, so  
24 you suspected that that was all that was the

1 themselves into rehab. I don't know if I would  
2 use the term to avoid investigation.

3 Q. Well, is there a Chicago Police  
4 Department policy, written policy, that you are  
5 aware of, whether it be department-wide or just  
6 within IAD, that restricts the ability of the  
7 Chicago Police to investigate anyone while they  
8 are -- strike that -- to interview or  
9 interrogate anyone, whether they be a police  
10 officer or a civilian, while they are in a  
11 health care facility?

12 A. I believe that would come under  
13 federal law of HIPAA.

14 Q. Where did you learn that from?

15 A. Where did I learn what from?

16 Q. You said you believe that falls under  
17 federal law HIPAA. Where did you come to the  
18 belief that HIPAA covers some circumstance of  
19 the ability of the Chicago Police to interview  
20 or interrogate somebody who is in a health care  
21 facility?

22 MS. McINNIS: Object to the form of  
23 the question.

24 THE WITNESS: HIPAA precludes me from

31 (Pages 118 to 121)

MARIE WALSH FITZGERALD, C.S.R. - (630) 241-4511



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1 finding out where someone is. . . .  
 2 BY MR. PROVENZALE:  
 3 Q. Where did you learn -- where did you  
 4 come to that belief? I mean, did you read  
 5 HIPAA? Did you -- were you trained in that or  
 6 instructed in that by somebody in the Chicago  
 7 Police Department? Where did that belief come  
 8 from?  
 9 A. I have never read, sat down and read  
 10 HIPAA, HIPAA law. But through working with the  
 11 medical section, police department medical  
 12 section and through personnel, I believe those  
 13 to be the guidelines.  
 14 Q. Guidelines being formal written  
 15 guidelines or guidelines being things that are  
 16 in practice, in your belief or your  
 17 understanding?  
 18 A. That's just my understanding.  
 19 Q. Of what? That these are formal  
 20 written guidelines somewhere, not federal law,  
 21 but incorporated into the policies and  
 22 procedures or general orders of the Chicago  
 23 Police Department, or just this is the way that  
 24 things are handled as a matter of practice?

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1 A. I have never seen those types of  
 2 orders.  
 3 Q. Let me ask you just in general. In a  
 4 circumstance where an individual is involved in  
 5 a reckless homicide because he was intoxicated  
 6 while he was operating a motor vehicle, and that  
 7 vehicle is, obviously, injured in that, kills  
 8 somebody else, and then is taken to a health  
 9 care facility somewhere.  
 10 Are you telling me that your  
 11 understanding of federal law is that you cannot  
 12 find out where that individual is taken in order  
 13 to obtain evidence from him or to interrogate or  
 14 question that individual?  
 15 A. It's my understanding that because I  
 16 did not know what facility he was in, there was  
 17 nothing further I could do.  
 18 Q. Your understanding is you cannot  
 19 obtain through any method other than asking a  
 20 hospital whether or not somebody is a patient  
 21 there, like finding a family member, looking for  
 22 witnesses, or anything like that to locate where  
 23 somebody whom you want to interview or  
 24 interrogate is being treated at?

1 A. It's my understanding that . . .  
 2 rehabilitation facilities will never confirm  
 3 that someone is actually there seeking  
 4 treatment.  
 5 Q. Well, that's assuming that you know  
 6 where the person is at to begin with?  
 7 A. Correct.  
 8 Q. So that you know which facility to  
 9 ask about, correct?  
 10 A. That's correct.  
 11 Q. I am talking about from any other  
 12 source, asking a family member, a father, a  
 13 brother, friend, a girlfriend or a partner do  
 14 you know where this guy is at, so that you could  
 15 then go to the facility and then say we know he  
 16 is here, we need to interview or interrogate  
 17 him?  
 18 A. The only other location that we  
 19 attempted was the father, and there was no  
 20 response at that house.  
 21 Q. I understand that. I am talking  
 22 about in the general. You are saying that once  
 23 you hear a suspect is in a medical treatment  
 24 facility, whether it be a rehab facility or

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1 hospital, the federal law prevents you from  
 2 learning where that individual is at from any  
 3 source, and then interrogating or questioning  
 4 that individual at that facility. Is that your  
 5 understanding?  
 6 A. I believe the facility doesn't have  
 7 to allow us in.  
 8 Q. So that is correct, that's your  
 9 understanding? Is that right?  
 10 A. That's my understanding.  
 11 Q. On that Monday when you contacted  
 12 EAP, what did they tell you?  
 13 A. All they can tell me is that they had  
 14 contact with him. That is it.  
 15 Q. Did they tell you what the contact  
 16 was?  
 17 A. No.  
 18 Q. Did they tell you specifically where  
 19 he was at, not in terms of the name or address  
 20 of the place, but what type of facility it was?  
 21 A. They cannot tell me any of that.  
 22 Q. Is it your assumption when you spoke  
 23 with them on phone that he was in a rehab  
 24 facility?

32 (Pages 122 to 125)

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1 A. That's my assumption, my guess.  
 2 Q. Tell me sort of the mechanics of how  
 3 this works. If a Chicago Police Department  
 4 employee checks himself into a hospital or rehab  
 5 facility or whatever, is it -- he is the one  
 6 that contacts EAP to notify them so that if  
 7 anybody is looking for him in connection with  
 8 him not showing up for work, that district or  
 9 supervisor, whomever, can call EAP and confirm  
 10 that he is somewhere where it's okay that he is  
 11 not at work that day?

12 A. EAP has counselors. Chicago Police  
 13 Department member can go to EAP, and they will  
 14 assist in locating the facility.

15 Q. So there is sort of like a referral  
 16 source for the City employees as to where they  
 17 can -- where an employee can go get treatment?

18 A. Yes.

19 Q. Do you have any information in  
 20 connection with this case that Mr. Abbate had  
 21 gone through EAP to obtain his referral for  
 22 whatever treatment he allegedly received?

23 A. Even if I asked that question, EAP is  
 24 not allowed to reveal any of that information

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1 whatsoever.

2 Q. Again, what I am asking is just  
 3 whether you received any of that information?

4 A. There is no way I would have received  
 5 that information.

6 Q. From any source, not necessarily from  
 7 EAP, from anybody?

8 A. No.

9 Q. Prior to you having called EAP on  
 10 February, whatever the date was, that Monday  
 11 2007?

12 A. I believe it was Monday.

13 Q. You believe it was.

14 You have already testified that  
 15 you were aware of officers having gone into  
 16 rehabilitation while they were under  
 17 investigation by IAD for some criminal conduct;  
 18 is that correct? Not necessarily in your words  
 19 to make themselves unavailable, but for whatever  
 20 reason?

21 A. Yes.

22 Q. How many prior to February of this  
 23 circumstance in February of 2007, were you aware  
 24 of?

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1 A. I couldn't even fathom a guess as to  
 2 that.

3 Q. Was it more than a hundred, less than  
 4 a hundred?

5 A. It was less than a hundred.

6 Q. Was it more than ten or less than  
 7 ten?

8 A. Ten, twenty, I -- that's a wild  
 9 guess. I really --

10 Q. I just kind of want to get the  
 11 boundaries. It's certainly not a hundred,  
 12 right?

13 A. No, it's not a hundred.

14 Q. Is it as high as 50 or could be or  
 15 somewhere in that range?

16 A. I don't think it would go as high as  
 17 50, but I don't know of every single officer  
 18 that has gone out and sought treatment.

19 Q. I am just asking in your experience  
 20 with cases that were assigned to the general  
 21 investigation section while you were in IAD  
 22 where officers who were the suspects of the  
 23 investigation were in some sort of  
 24 rehabilitation facility for a period of time

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1 during the investigation?

2 A. It has happened, yes.

3 Q. And the number of times that that has  
 4 happened?

5 A. It's not as high as 50.

6 Q. Can you be any more specific; lower  
 7 than 50, like not as high as?

8 A. No. I couldn't guess.

9 Q. Somewhere between 10 and 50?

10 A. Yes.

11 Q. At any time prior to the time that  
 12 you called EAP, had you coordinated any  
 13 investigatory efforts with Lieutenant Calloway?

14 A. No.

15 Q. Is the extent of your request for the  
 16 involvement of one of Lieutenant Calloway's men,  
 17 Detective Boyd, simply the request and no other  
 18 collaboration?

19 A. I didn't make the request.

20 Q. I'm sorry, ADS Kirby had made that?

21 A. Yes.

22 Q. Other than that request that had been  
 23 made by ADS Kirby, you had no contact with  
 24 Lieutenant Boyd up to the point where you called

33 (Pages 126 to 129)

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1 EAP?  
 2 A. Lieutenant?  
 3 Q. Lieutenant Calloway.  
 4 A. No, I had no contact with him.  
 5 Q. Once you had followed up on your  
 6 suspicion, called EAP and inquired about  
 7 Mr. Abbate, at that point you had confirmed that  
 8 he wasn't -- that he was in a rehab facility or  
 9 somewhere where you couldn't get at him for that  
 10 time period?  
 11 A. That was my guess.  
 12 Q. It wasn't anything confirmed, in  
 13 fact, by you at that point? It was your  
 14 suspicion that given their response, that's  
 15 where he was?  
 16 A. Given their response of them  
 17 verifying they had contact with him, it was my  
 18 assumption that he had been entered into a  
 19 rehabilitation facility.  
 20 Q. For all you know, it could have been  
 21 a hospital, not necessarily a rehabilitation  
 22 facility, he could have had some physical  
 23 illness, correct?  
 24 A. Correct.

1 was simply just to wait for him or someone else  
 2 on his end to contact IAD; is that correct?  
 3 A. Correct.  
 4 Q. Other than that angle of the  
 5 investigation of locating Mr. Abbate, was there  
 6 anything else investigative that -- any other  
 7 investigator steps that Deb Kirby had instructed  
 8 you to do other than interview the victim and  
 9 attempt to locate Mr. Abbate?  
 10 A. No, that was it.  
 11 Q. After you had contacted EAP, had the  
 12 conversation with Deb Kirby, did you have a  
 13 conversation with anybody else in IAD advising  
 14 them of what your suspicion was?  
 15 A. No, not -- not that I can recall  
 16 specific, no.  
 17 Q. Did you ever tell either Sergeants  
 18 Maraffino or Martin that they should call off  
 19 their attempts to locate him because they are  
 20 not going to find him?  
 21 A. I don't know if I gave them explicit  
 22 instructions or just didn't tell them to go out  
 23 and look for him anymore. I don't remember  
 24 which way it was.

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1 Q. At that point, did you communicate  
 2 that information to anybody in IAD?  
 3 A. I had spoken to Deputy Kirby, yes.  
 4 Q. What did you tell her?  
 5 A. I told her that it was my belief that  
 6 due to EAP confirming that they had contact with  
 7 Mr. Abbate, that he was in some type of a  
 8 treatment facility.  
 9 Q. What did she tell you to do at that  
 10 point?  
 11 A. I believe it was that it was almost  
 12 fruitless to continue attempting to locate  
 13 Mr. Abbate at that point, and to wait until we  
 14 had some type of confirmation on that.  
 15 Q. What instruction did she give you  
 16 regarding any effort to confirm that?  
 17 A. We would have to wait for someone to  
 18 call us and let us know.  
 19 Q. So there was nothing at that point  
 20 that you were aware of that -- strike that.  
 21 There was nothing that Deputy  
 22 Kirby told you to do at that point that was  
 23 affirmative in terms of attempting to locate  
 24 where he is at or what his condition was? It

1 Q. Do you know whether they were  
 2 continuing to go out and look for him,  
 3 notwithstanding the fact that you had a  
 4 suspicion that he might be in a rehab facility?  
 5 In other words, just in case he wasn't, that  
 6 they would continue to go and try and locate  
 7 him?  
 8 A. They wouldn't have done that without  
 9 my instructions as to that. They did have other  
 10 responsibilities to attend to.  
 11 Q. Well, tell me why they wouldn't have  
 12 done that without your instructions?  
 13 MS. McINNIS: Objection to  
 14 speculation, what somebody else would or would  
 15 not do.  
 16 BY MR. PROVENZALE:  
 17 Q. The reason I asked you is previously  
 18 you said they would have gone ahead and followed  
 19 up the following day on their own?  
 20 A. Right.  
 21 Q. So why wouldn't they have done it  
 22 later on on their own without your instructions?  
 23 MS. McINNIS: Same objection to the  
 24 form.

34 (Pages 130 to 133)

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1 THE WITNESS: I would have told them  
2 to follow up on it. If I gave them no further  
3 instructions to follow up, they probably would  
4 have assumed that they were done at that point.

5 BY MR. PROVENZALE:

6 Q. And that's what I want to kind of get  
7 a handle on. Did you ever tell them to your  
8 recollection, once you have talked to EAP and  
9 you had some of your suspicion confirmed that he  
10 wasn't going to be available to be located, that  
11 you told them just, you know, call off the dogs  
12 for now, let's wait and then see what happens?

13 MS. McINNIS: Object to the form of  
14 the question.

15 THE WITNESS: I may have. I don't  
16 recall the specific conversation.

17 BY MR. PROVENZALE:

18 Q. As you sit here today, other than  
19 your assumption that they had followed up the  
20 day following the initial assignment that you  
21 had given them that night that all this  
22 transpired on the 22nd, you don't know whether  
23 they followed up on any other occasions to try  
24 to location Mr. Abbate, is that correct, prior

1 Thursday.

2 Q. Between the time that you had spoken  
3 with EAP and the time that Tom Needham had  
4 called you, was there any investigation that you  
5 are aware of that IAD had done to attempt to  
6 locate what facility Mr. Abbate was at?

7 A. Not that I'm aware of.

8 Q. What else did you and Mr. Needham  
9 discuss regarding the expected release of  
10 Mr. Abbate from the hospital?

11 A. Mr. Needham told me that at that time  
12 when Mr. Abbate was going to be released, he  
13 would be willing to turn himself in.

14 Q. Are you aware of as of that time  
15 anyone communicating previously to Mr. Needham  
16 that there was an outstanding complaint for a  
17 criminal offense against Mr. Abbate that he  
18 would have to turn himself in on?

19 A. That was the only conversation I had  
20 with Mr. Needham regarding this.

21 Q. Do you know how it was that  
22 Mr. Needham knew ahead of time there was a  
23 complaint sworn out against him for a criminal  
24 office?

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1 to the time that he was arrested?

2 A. Not that I'm aware of, no.

3 Q. But you don't remember ever telling  
4 them that specifically?

5 A. I don't recall that specific  
6 conversation, no.

7 Q. At any point -- at some point after  
8 that, you learned that -- did you learn that he  
9 was out of whatever facility he was in that was  
10 the obstacle to your ability to locate him?

11 A. I learned that he was coming out.

12 Q. And from whom did you learn that?

13 A. I received a phone call at work. I  
14 believe it was his original attorney Needham.

15 Q. Tom Needham?

16 A. Yes.

17 Q. And what did he tell you?

18 A. Told me that it was my -- it was his  
19 understanding that we had been looking for  
20 Mr. Abbate, and Mr. Abbate would be getting out  
21 of the hospital the next week.

22 Q. What day did he call you?

23 A. I don't recall what it was. It was  
24 towards the end of the week, possibly Wednesday,

1 MS. McINNIS: Object to form;  
2 speculation.

3 MR. PROVENZALE: At the time that he  
4 called you?

5 THE WITNESS: I have no idea why he  
6 called me. I never sought out Mr. Needham.

7 BY MR. PROVENZALE:

8 Q. What I am saying is: Do you know how  
9 it was that he knew that there was a complaint  
10 filed out against his client prior to the time  
11 that he called you when he told you that  
12 Mr. Abbate would surrender? Did he tell you  
13 during the conversation that there was a  
14 complaint, he needs to surrender, or was it your  
15 impression he knew that already when you had the  
16 conversation with him?

17 MS. McINNIS: Object; form,  
18 speculation, compound.

19 THE WITNESS: There was no talk of  
20 Mr. Needham knowing of a complaint. And all he  
21 told me was that Mr. Abbate was willing to turn  
22 himself in. He didn't use the word surrender.

23 BY MR. PROVENZALE:

24 Q. Prior to that time that Mr. Needham

35 (Pages 134 to 137)



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1 ...had contacted your office, are you aware of any  
2 communication directed to Mr. Abbate advising  
3 him of the fact that IAD was looking for him?

4 MS. McINNIS: Objection to form,  
5 vague.

6 THE WITNESS: I have no idea what was  
7 communicated to Mr. Abbate.

8 BY MR. PROVENZALE:

9 Q. I am talking about they left a card,  
10 Maraffino or Martin left a card at his  
11 residence, telling him please call IAD  
12 immediately, or that they left something in his  
13 locker at the 20th District telling him that, or  
14 a certified letter was sent to his residence or  
15 to his emergency contact, anything like that? A  
16 communication to him advising him that IAD  
17 wanted to talk with him?

18 A. I don't know of -- I know that they  
19 were at the house, and I know business cards  
20 were left. I don't know how that would have  
21 been communicated to Mr. Abbate by someone else.

22 Q. Nobody staked out his house, right?

23 A. No.

24 Q. There is no surveillance on his home

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1 with Mr. Needham were specific arrangements made  
2 for Mr. Abbate to turn himself in, being a time  
3 and a place?

4 A. He was -- he asked what he could do,  
5 and I told him to have him come to headquarters  
6 building as soon as he got out of the hospital.

7 Q. Did you receive any other  
8 communication from either Mr. Abbate or  
9 Mr. Needham after that phone call?

10 A. No.

11 Q. Did you advise Deb Kirby that you had  
12 received a phone call from Mr. Needham about  
13 Mr. Abbate turning himself in?

14 A. Yes.

15 Q. Did you do it the same day that you  
16 received the phone call or some time after?

17 A. No, the same day.

18 Q. Was there any conversation between  
19 yourself and Deb Kirby about that?

20 A. I am sure there was. I can't recall  
21 specifics.

22 Q. So at some point after, you get a  
23 call from whom regarding the specifics of when  
24 Mr. Abbate was going to show up and turn himself

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1 to see if or when he was going to return to his  
2 house, correct?

3 A. Correct.

4 Q. So there is -- I mean, there is no  
5 way you can say that after they left a card or a  
6 letter or something at his house that he  
7 wouldn't have gotten it coming to his house when  
8 no one was around, right?

9 MS. McINNIS: Objection to form;  
10 argumentative.

11 THE WITNESS: I don't know.

12 BY MR. PROVENZALE:

13 Q. But to your knowledge, you don't know  
14 what -- you don't know of any kind of  
15 communication that was directed to Mr. Abbate to  
16 let him know IAD was attempting to contact him;  
17 is that correct?

18 MS. McINNIS: Objection; asked and  
19 answered.

20 THE WITNESS: No, I don't know that.

21 BY MR. PROVENZALE:

22 Q. After you had the conversation --  
23 well, strike that.

24 When you had this conversation

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1 in?

2 A. From whom?

3 Q. Yes. Did you receive a phone call,  
4 or did he just show up out of the blue.

5 A. No. Mr. Needham had told me that he  
6 would be getting out of the hospital next week.  
7 That was the only conversation I had until  
8 Mr. Abbate came to internal affairs. I  
9 believe he gave me the date, whatever the  
10 date that he came in, that the police powers  
11 were removed.

12 Q. According to the records, March 14th  
13 is the date that he turned himself in --

14 A. Okay.

15 Q. -- at headquarters.

16 Do you recall whether or not there  
17 was a phone call from anyone ahead of time  
18 advising you or anybody else in IAD that he is  
19 coming in now?

20 A. No.

21 Q. You never spoke with Tom Needham that  
22 day, correct, the day Mr. Abbate turned himself  
23 in?

24 A. Mr. Needham had made it clear that he

36 (Pages 138 to 141)

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1 was not coming to headquarters.  
 2 Q. But you never spoke to him on that  
 3 day that Mr. Abbate turned himself in?  
 4 A. No, I did not.  
 5 Q. You didn't speak to Mr. Abbate as  
 6 well, correct?  
 7 A. Correct.  
 8 Q. Did you speak with anybody who was --  
 9 who represented Mr. Abbate, whether it be a  
 10 family member, a friend or anything where they  
 11 advised you that he was turning himself in on  
 12 that day?  
 13 A. No.  
 14 Q. So as far as him having turned  
 15 himself in on the 14th, your recollection is  
 16 that Mr. Needham was the one who told you that  
 17 that day that's the day he would be turning  
 18 himself in?  
 19 A. Yes.  
 20 Q. Did you inquire of Mr. Needham when  
 21 you had him on the phone as to where Mr. Abbate  
 22 was?  
 23 A. No.  
 24 Q. You didn't ask him whether he was in

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1 a hospital or rehabilitation facility?  
 2 A. He told me that when he got out of  
 3 the hospital, he would be turning himself in.  
 4 Q. He referenced it as a hospital; is  
 5 that correct?  
 6 A. A hospital.  
 7 Q. Did you ask him what hospital  
 8 Mr. Abbate was in?  
 9 A. No, I did not.  
 10 Q. Mr. Abbate then turned himself in on  
 11 the 14th; is that correct?  
 12 A. If that's the day of the report, yes.  
 13 Q. Thereafter, you were requested to  
 14 have your personnel serve Mr. Abbate with a  
 15 notice of suspension; is that correct?  
 16 A. Not the notice of suspension.  
 17 Q. With the what?  
 18 A. With removal of the police powers.  
 19 Q. Right. That was on the 14th?  
 20 A. Yes.  
 21 Q. Or the day that he turned himself in,  
 22 correct?  
 23 A. Yes.  
 24 Q. I am talking about after that day, at

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1 some point after that day, were you asked to  
 2 serve Mr. -- you asked to have someone in your  
 3 division serve Mr. Abbate with the notice of  
 4 suspension?  
 5 A. Yes. I believe this was at least a  
 6 year later.  
 7 Q. A year later?  
 8 A. The following year maybe.  
 9 Q. Yes. In March of '08, does that  
 10 sound about right?  
 11 A. Yes.  
 12 Q. After Mr. Abbate had turned himself  
 13 in on March 14th, did you make any attempts to  
 14 identify what hospital he had been in?  
 15 A. No.  
 16 Q. Did Deb Kirby ever ask you to look  
 17 into that?  
 18 A. No.  
 19 Q. Give me just a minute real quick.  
 20 Did you ever speak with Detective  
 21 Boyd and -- let me just say, did you ever speak  
 22 with Detective Boyd and Sergeant Stehlik about  
 23 what the victim had told them when they went to  
 24 interview her?

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1 A. It did come up in conversation  
 2 with -- I don't believe I saw Detective Boyd any  
 3 further the night that they -- after they  
 4 interviewed her. I did have some general  
 5 conversation with Sergeant Stehlik, though.  
 6 Q. Are you aware of Detective Boyd and  
 7 Lieutenant Calloway going to the State's  
 8 Attorneys -- strike that -- to OPS on the day  
 9 after the night when you had been at  
 10 headquarters and looked at the video and made  
 11 your initial assignments?  
 12 MS. McINNIS: Don't answer that  
 13 question as posed.  
 14 Aware of them other than his  
 15 attorneys, then I will let him answer?  
 16 MR. PROVENZALE: Yes, that's with  
 17 that stipulation  
 18 MS. McINNIS: With that stipulation.  
 19 BY MR. PROVENZALE:  
 20 Q. With that stipulation, other than  
 21 through your counsel?  
 22 A. I am not aware of that.  
 23 Q. Did you ever -- so you never spoke  
 24 with either Keith Calloway or Dion Boyd about

37 (Pages 142 to 145)

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1 any meeting that they attended at OPS, where Mike  
2 Duffy, Tom Bilyk, Lauren Freeman, and both of  
3 them were at when the video was displayed again?

4 A. I have no knowledge of that.

5 Q. Based upon your conversation with Deb  
6 Kirby the night that she had this phone call  
7 with Mr. Bilyk in her office, the conversation  
8 you had with her afterwards, did you understand  
9 from what she relayed, Tom Bilyk had said that  
10 the State's Attorney was outright rejecting the  
11 possibility of any felony charges in connection  
12 with what was shown in that videotape? Or that  
13 just that they weren't authorizing it at that  
14 time, pending further investigation?

15 A. They were not interested in pursuing  
16 it at all.

17 Q. Okay. Have you ever spoken with Deb  
18 Kirby where you discussed any change in position  
19 that the State's Attorney took about what --  
20 whether they were going to consider felony  
21 charges against Mr. Abbate for what was shown in  
22 that videotape?

23 A. I don't recall any conversation about  
24 that.

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1 Q. Well, at some point after Mr. Abbate  
2 had turned himself in, you learned that the  
3 State's Attorney authorized felony charges, is  
4 that correct, related to the conduct -- to his,  
5 Mr. Abbate's conduct that's displayed in that  
6 videotape of the bar beating?

7 A. I think I learned that more through  
8 the media than anything else.

9 Q. Well, regardless -- I didn't say who  
10 you learned it from. I said at some point after  
11 he turned himself in, you learned that?

12 A. Yes.

13 Q. When you learned that in your mind,  
14 did that sound like a 180 on the State's  
15 Attorney's position about whether or not -- or  
16 your understanding of the State's Attorney's  
17 position, about whether or not they were  
18 authorizing felony charges at all?

19 A. My opinion?

20 Q. Yes.

21 A. It's a complete 180.

22 Q. Did you talk with anybody at IAD  
23 about that?

24 A. I am sure that there was lunchtime

1 conversation; nothing formal.

2 Q. Well, in any way, formal or informal,  
3 did you talk with anybody about your opinion  
4 that the State's Attorney had pulled a 180 on  
5 that?

6 A. I am sure I did, yes.

7 Q. Who did you talk to?

8 A. I could not even begin to guess.

9 Q. Did you ever talk to Deb Kirby about  
10 that?

11 A. I don't know.

12 Q. Did you ever talk to Keith Calloway  
13 about that?

14 A. No.

15 Q. Did Keith Calloway -- did you ever  
16 talk to Keith Calloway in any way after the  
17 media reports of the State's Attorneys  
18 authorizing felony charges regarding that  
19 decision?

20 A. I have never had a conversation  
21 regarding this matter with Keith Calloway.

22 Q. Let me ask you: In connection with  
23 what you saw on that videotape, were you aware,  
24 personally aware of any legal basis for felony

1 charges that could have been brought against  
2 Mr. Abbate as of the evening when you first saw  
3 the video?

4 A. Without knowing the charge that was  
5 ultimately presented, which I had never heard  
6 of, it did not appear to me to reach the level  
7 of an aggravated battery.

8 Q. That's what I am getting at. As of  
9 the night that you first saw the video, and then  
10 you had the conversations with Deb Kirby and  
11 then she talked with Tom Bilyk, and then you  
12 talked with her again afterwards.

13 On that day, you were not aware  
14 that there was a subsection of the aggravated  
15 battery statute that provided for an enhancement  
16 of a simple battery where there is only bodily  
17 harm to that of aggravated battery because the  
18 incident occurred in a public place of  
19 amusement?

20 A. I had never heard of that charge  
21 before.

22 Q. Or a public place of accommodation;  
23 is that correct?

24 A. Right.

38 (Pages 146 to 149)

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1 Q. You had never heard of that before?

2 A. I had never heard of that charge  
3 before.

4 Q. Had you ever spoken with anyone ever  
5 other than your counsel who has advised you that  
6 any attorney at the State's Attorney Office had  
7 indicated that they had to do research in order  
8 to identify that subsection of the aggravated  
9 battery statute prior to the time that they  
10 charged it?

11 A. I don't know what the State's  
12 Attorney's Office was researching.

13 Q. That's what I am asking you. Did  
14 anybody ever tell you that other than your  
15 counsel?

16 A. No.

17 Q. Did anybody ever tell you -- Let me  
18 finish.

19 Did anybody ever tell you that  
20 someone from the State's Attorney's Office told  
21 them that that's what the State's Attorneys had  
22 to do in order to identify that particular basis  
23 to charge aggravated battery?

24 A. No.

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1 MR. PROVENZALE: I don't have  
2 anything further.

3 EXAMINATION

4 BY

5 MR. MALATESTA:

6 Q. Through the course of your  
7 involvement in this investigation, and this may  
8 have been touched on a little bit earlier, but  
9 did you ever discover any evidence, or did your  
10 investigation ever reveal that Mr. Abbate had  
11 tried to threaten or intimidate any witnesses  
12 involved in this matter?

13 A. I was not made aware of that at all.

14 Q. So you have never heard or seen any  
15 materials based on your involvement in this  
16 investigation that indicate that?

17 A. I never heard that. I never heard  
18 that rumor. I never saw any type of report as  
19 to that.

20 Q. And that would also include the  
21 victim of the battery, in this case, Karolina  
22 Obrycka?

23 A. Correct.

24 MR. MALATESTA: Thank you,

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1 Lieutenant.

2 MS. McINNIS: Signature is reserved.  
3 (FURTHER DEPONENT SAITH NOT)  
4 \*\*\*\*\*

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1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ILLINOIS

3 EASTERN DIVISION

4 KAROLINA OBRYCKA, MARTIN )  
5 KOLODZIEJ, and EVA CEPIASZUK, )  
6 Plaintiffs, )

7 vs. ) No. 07 C 2372

8 CITY OF CHICAGO, a Municipal ) Judge  
9 Corporation, ANTHONY ABBATE, ) Amy J. St. Eve  
10 JR., GARY ORTIZ, PATTI )  
11 CHIRIBOGA, and JOHN DOE, )  
12 Defendants. )

13 This is to certify that I have  
14 read the transcript of my deposition taken on  
15 January 16, 2009 in the foregoing cause,  
16 consisting of Pages 1 - 152, inclusive, and that  
17 the foregoing transcript accurately states the  
18 questions asked and the answers given by me,  
19 with corrections, if any, appearing on the  
20 attached correction sheet(s).

21 \_\_\_\_\_  
22 correction sheets attached.

23 DAVID NALEWAY

24 SUBSCRIBED AND SWORN TO  
BEFORE ME THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, A.D., 2009.

NOTARY PUBLIC.

39 (Pages 150 to 153)

MARIE WALSH FITZGERALD, C.S.R. - (630) 241-4511



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1 STATE OF ILLINOIS):

) SS:

2 COUNTY OF DU PAGE)

3 I, MARIBETH REILLY, a Notary Public  
 4 within and for the County of DuPage, State of  
 5 Illinois, and a Certified Shorthand Reporter of  
 6 said State, do hereby certify that heretofore,  
 7 to-wit, on January 16, 2009, personally appeared  
 8 before me at 219 South Dearborn Street, Suite  
 9 219, in the City of Chicago, County of Cook and  
 10 State of Illinois, DAVID NALEWAY, Witness, in a  
 11 certain cause now pending and undetermined in  
 12 the United States District Court, Northern  
 13 District of Illinois.

14 I further certify that the said DAVID  
 15 NALEWAY, was by me first duly sworn to testify  
 16 the truth, the whole truth, and nothing but the  
 17 truth in the cause aforesaid; that the testimony  
 18 then given by said witness was reported  
 19 stenographically by me, in the presence of the  
 20 said witness, and afterwards reduced to  
 21 typewriting; and the foregoing is a true and  
 22 complete and correct transcript of the testimony  
 23 so given by said witness as aforesaid.

24 I further certify that the signature

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1 of the witness to the foregoing deposition was  
 2 reserved.

3 I further certify that I am not  
 4 counsel for nor in any way related to any of the  
 5 parties to this suit, nor am I in any way  
 6 interested in the outcome thereof.

7 In testimony whereof, I have hereunto  
 8 set my hand and affixed my Notarial Seal this  
 9 1st day of June, A.D., 2009.

10  
11  
12  
13  
14

\_\_\_\_\_  
 Certified Shorthand

Reporter

Notary Public

DuPage County, Illinois.

C.S.R. No. 084-002306



15  
16  
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40 (Pages 154 to 155)

MARIE WALSH FITZGERALD, C.S.R. - (630) 241-4511